

No. 15063

United States
Court of Appeals
for the Ninth Circuit

JOSEPH P. HENNESSEY,

Appellant.

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
District of Montana, Billings Division

FILED

JUL 26 1956



No. 15063

United States
Court of Appeals
for the Ninth Circuit

JOSEPH P. HENNESSEY,

Appellant.

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
District of Montana, Billings Division

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Answer	6
Attorneys, Names and Addresses of.....	1
Bond on Appeal.....	25
Certificate of Clerk.....	415
Complaint	3
Findings of Fact and Conclusions of Law.....	8
Judgment	24
Motion for New Trial and Amendment of Find- ings	16
Notice of Appeal.....	25
Order on Motion for New Trial and Amend- ment of Findings.....	17
Statement of Points, Appellant's.....	417
Stipulation Re Printing of the Original Ex- hibits	419
Transcript of Proceedings, Portions of (Ex- hibit "A" on Appeal).....	27
Witnesses, Defendant's:	
Allard, Louis Clayton	
—direct	385
—cross	404
—redirect	414
—recross	414

Witnesses, Defendant's—(Continued) :

Strahl, H. Edgar

—direct	365
—cross	384
—redirect	385

Witnesses, Plaintiff's:

Hennessey, Joseph P.

—direct	28, 52, 88
—cross	54, 64
—redirect	87

Horst, C. H.

—direct	193, 316
—cross	242, 248, 334
—redirect	284
—recross	306

Livingston, Fay R. (Deposition)

—direct	108
—cross	122

Soltero, Harry R.

—direct	95
—cross	100
—redirect	107

Stokoe, Robert Scott

—direct	125, 130, 159
—cross	168
—redirect	190

Wheeler, Harry C.

—direct	364
---------------	-----

NAMES AND ADDRESSES OF ATTORNEYS

DOEPKER AND HENNESSEY,
312-316 Medical Arts Building,
Butte, Montana;

Attorneys for Plaintiff-Appellant.

KREST CYR,
United States District Attorney;

MICHAEL J. O'CONNELL,
Assistant United States Attorney;

FRANK M. KERR,
Assistant United States Attorney,
Federal Building,
Butte, Montana;

DALE F. GALLES,
Assistant United States Attorney,
Box 1478,
Billings, Montana;

Attorneys for Defendant-Appellee.

In the District Court of the United States,
District of Montana, Billings Division

No. 1313

JOSEPH P. HENNESSEY,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

COMPLAINT

Plaintiff complains and alleges:

1.

This cause of action is brought under the provisions of the Legislative Re-Organization Act of 1946, Title IV, Federal Tort Claims Act, Part 3, Section 410 a, second session of the 79th Congress of the United States of America and amendments thereto Title 28, Section 1346 b, Section 2674 and Section 2671, U. S. C. A. This matter in controversy, exclusive of interest and costs exceeds the sum of Three Thousand Dollars.

2.

That the plaintiff is and has been during all of the time herein mentioned resides in and was a resident of Billings, Montana, in the District of Montana and is and was a citizen of the State of Montana.

3.

That on the 2nd day of June, 1949, the plaintiff was a passenger and accepted the invitation of

Western Air Lines Incorporated, a corporation, to become a passenger of said common carrier of passengers by air from its airport at Pocatello in the State of Idaho to fly to Butte, Montana, and while at its depot at Phillips Field said plaintiff entered the men's toilet of the said airport at Pocatello, Idaho, and while using the toilet facilities was injured as the approximate result of a servant and employee of the defendant who was then and there acting within the scope and course of his employment for the defendant and pursuant to his duties for the defendant as hereinafter specifically alleged.

4.

That on the 2nd day of June, 1949, one Fay R. Livingston was employed by the United States Department of Commerce at Phillips Field, Pocatello, Idaho, working for the United States Weather Bureau and about the hour of 2:10 p.m. of said day was engaged in the course and scope of his employment for the defendant, upstairs in the said airport building and he negligently and carelessly entered an upstairs room above the aforesaid men's toilet and negligently walked between the rafters of said upstairs room and fell through the space between said rafters and the ceiling of said men's toilet and fell violently upon the plaintiff while he was rightfully using the toilet facilities of said airport.

5.

That as the proximate result of the aforesaid negligence, plaintiff sustained a severe wrenching,

bruising and contusing of the muscles, tissues and tendons of his neck and right shoulder and the muscles, tissues and tendons of the cervical dorsal and lumbar spine were strained and the right supra-clavicular nerve was crushed and plaintiff sustained other internal injuries which plaintiff alleges, on his information and belief, caused an embolus to form and travel through the blood vessels and lodged and cause paralysis of plaintiff's right and left legs and permanent impairment of plaintiff's left leg and great pain and suffering ever since said injury all of which was due to and proximately caused by the aforesaid negligence of said servant and employee of the defendant while he was engaged in the course and scope of his employment by defendant and thereby plaintiff has sustained damage in the sum of fifty thousand dollars.

6.

That as the proximate result of said negligence and his injuries sustained as aforesaid plaintiff has been required to incur expense for the services of physicians and surgeons and hospitalization and he has incurred, and on his information and belief, alleges that he will be required to incur expense for hospitalization in a total sum of two thousand dollars and for the services of physicians and surgeons a total sum of fifteen hundred dollars and thereby plaintiff has been further damaged in the sum of thirty-five hundred dollars.

Wherefore plaintiff demands judgment in the sum of fifty-three thousand five hundred dollars and costs of suit.

DOEPKER & HENNESSEY,

By /s/ M. J. DOEPKER,

Attorneys for Plaintiff.

[Endorsed]: Filed June 1, 1951.

[Title of District Court and Cause.]

ANSWER

Comes Now the above-named defendant, The United States of America, by and through Dalton Pierson, United States Attorney, and Emmett C. Angland, Assistant United States Attorney for the District of Montana, and for answer to plaintiff's complaint on file herein, admits, denies and alleges:

1.

Admits the allegations in paragraph 1 of said complaint.

2.

Admits the allegations in paragraph 2 of said complaint.

3.

Answering paragraph 3 of said complaint, defendant alleges that it is without knowledge or information sufficient to form a belief as to the

truth of the allegations in said paragraph 3, and therefore denies the same.

4.

Admits that Fay R. Livingston was employed by the defendant on the 2nd day of June, 1949, and was working at the United States Weather Bureau; and as to the other allegations contained in said paragraph 4 of plaintiff's complaint, defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of said allegations and therefore denies the same.

5.

Answering paragraph 5 of said complaint, defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of said allegations and therefore denies the same.

6.

Answering paragraph 6 of said complaint, defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of said allegations and therefore denies the same.

7.

Denies each and every matter, fact and thing contained in plaintiff's complaint and not herein specifically admitted.

Wherefore, having fully answered plaintiff's complaint, defendant prays that plaintiff take

nothing by reason thereof and that the United States of America, defendant herein, have judgment for its costs and disbursements herein incurred.

DALTON PIERSON,

United States Attorney

for the District of Montana.

/s/ EMMETT C. ANGLAND,

Assistant United States Attorney for the District
of Montana.

[Endorsed]: Filed February 15, 1952.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came regularly on for trial before the above-entitled Court, sitting without a jury, on the 15th day of January, 1953, and after being continued from time to time was completed on February 6th, 1953; the firm of Doepker & Hennessey appeared as attorneys for plaintiff, and Emmett C. Angland, Esq., the Assistant United States District Attorney for the District of Montana, appeared as attorney for the defendant.

The Court having heard all of the testimony and having examined the proofs offered by the respective parties and briefs having been submitted for the respective parties, and the Court being now

fully advised in the premises, makes the following Findings of Fact and Conclusions of Law, to wit:

Findings of Fact

I.

That plaintiff, Joseph P. Hennessey, was, is and has been during all of the time herein mentioned, a resident of Billings, Montana, residing in the District of Montana, and was, is and has been a citizen of the State of Montana.

II.

That on the 2nd day of June, 1949, the plaintiff had accepted the invitation of Western Air Lines, Incorporated, a corporation, to become a passenger on its air line and had arrived at its airport and depot near Pocatello, in the State of Idaho, at a place known as Phillips Field.

III.

That Western Air Lines, Incorporated, provided for its patrons a men's toilet, adjacent to the waiting room at said depot.

IV.

That the United States Department of Commerce occupied for the United States Weather Bureau, a portion of the building also occupied by Western Air Lines, Incorporated, a corporation, which was known as the administration building and the quarters of the United States Weather Bureau and the Western Air Lines, Incorporated, were situated side by side in said administration building.

V.

That the United States Weather Bureau, as a part of its operations for the United States of America, made use of a room known as a pibal of theodolite room which was located adjacent to and above the men's toilet furnished by the Western Air Lines, Incorporated, for its patrons and others.

VI.

That directly above the men's toilet was an attic space in the said administration building, which was unfinished on June 2nd, 1949, and on the afternoon of said day, at the time of the happening of the occurrence hereinafter mentioned, the attic space was dark.

VII.

That the pibal or theodolite room was constructed above a vault situated to the west of the men's toilet mentioned, the floor of the theodolite room being above the vault. The theodolite instrument and the weather observation dome was reached by some steps leading from the floor of the theodolite room to the platform which was used for the operations of the United States Weather Bureau.

VIII.

Just a little above the platform floor, near the top of the stairs leading to the platform, a 110 volt electrical outlet was wired and connected in the south wall of the theodolite room; to the east a cubby hole was located in the easterly wall of the theodolite room which gave access to the attic space. Entry into the attic space through the cubby hole

would be directly above the ceiling of the men's toilet and was on June 2nd, 1949, the ceiling of the men's toilet which was fastened at the base of the joists at the bottom of the attic space immediately adjacent to the theodolite room and easterly therefrom.

IX.

That on June 2nd, 1949, one, Fay R. Livingston, a man five feet four inches in height and weighing between one hundred fifteen and one hundred thirty pounds was employed by the United States Weather Bureau at the administration building at Phillips Field near Pocatello, Idaho. His hours of duty were between eight in the morning and four thirty in the afternoon of that day. He was engaged in his regular work taking observations, weather observations and making maps, plotting radio sound observations. Mr. Livingston had a little over six years' experience working for the United States Weather Bureau. On the afternoon of June 2nd, 1949, Mr. Livingston, in the course of his employment, went to the pibal or theodolite room above the vault mentioned, mounted to the platform, conducted his observations and coming down after he had finished a balloon run, encountered an extension wire which was stretched from the 110 volt outlet, across the stairway, through the cubby hole into the attic space mentioned. He pulled the extension wire out of its socket in some way. He was concerned that he might have left somebody in the dark in the attic. To make certain there wasn't anyone working in there he stepped up on a box beneath the cubby

hole and leaned. To make certain there wasn't anyone working in the attic he attempted to step out on a ceiling joist to look back in the attic to see if there was anyone there and he missed the ceiling joist and fell through the ceiling. At this moment Joseph P. Hennessey, the plaintiff, was in the men's toilet. Livingston fell upon him, striking him high on the right shoulder and back.

X.

Fay R. Livingston fell through the ceiling of the men's toilet between two and two-thirty o'clock of the afternoon of June 2nd, 1949. The plaintiff Joseph P. Hennessey, was in the toilet provided, preparatory to boarding a plane for a trip to Butte, Montana. Fay R. Livingston had very little knowledge of the attic space in the area above the men's wash room. He had not had occasion to be in there before. The Weather Bureau had occupied the building just two weeks prior to the occurrence. It was lighter in the theodolite room than in the attic space through the cubby hole. In entering the attic space Livingston went from a lighter room into a darker room. He did not connect up the light extension or turn on the light.

XI.

While acting in the course of his employment, Fay R. Livingston failed to exercise ordinary care in the following particulars:

He failed to connect up the extension cord by putting the plug back in the wall socket.

He stepped into a place he knew nothing about and where there was not sufficient light for him to see where he was stepping.

He failed to look where he was going as he stepped into the attic. He failed to make sure that he was stepping on a solid joist or plank before putting his weight upon the place where he was stepping.

He went from a lighted room into a dark space, in an area he was not familiar with, knowing that it was above the airport facilities.

He knew the building was unfinished and in the process of construction, yet failed to exercise ordinary care in entering the attic space.

He failed to use means at his disposal—the electric light extension—to light the place where he was stepping.

XII.

That as a direct result of the negligence of Fay R. Livingston mentioned in Finding of Fact XI herein, the plaintiff Joseph P. Hennessey, sustained the following personal injuries:

The muscles, tissues and tendons of his shoulder and neck were hurt, producing a supra-clavicular neuritis of the right shoulder, and plaintiff continues to suffer some slight discomfiture from such condition and will in the future suffer such discomfiture. He sustained an injury to his back. The back injury cleared up. By reason of his injury plaintiff was required to incur the following expenses: Sol-

tero Medical and Surgical Group, Billings, Montana, \$12.00, for treatment of shoulder.

XIII.

That by reason of the negligent acts and omissions of the defendant's servant and employee, Fay R. Livingston, the plaintiff, Joseph P. Hennessey, has sustained damage because of the injury to his shoulder, neck and back, past pain and suffering and disability of the shoulder and neck, as well as future discomfiture, in the sum of \$2,500.00.

XIV.

That on or about January 7, 1950, the plaintiff suffered a blood clot or embolus in his aorta which temporarily lodged where the aorta splits to go down either leg; that thereafter the said blood clot or embolus became dislodged from where it had stopped at the junction of the aorta and slipped down in the artery of the plaintiff's left leg; that as a result of the said blood clot or embolus the blood supply to plaintiff's legs was cut off, plaintiff suffered excruciating pain in the region of the lower back and legs, and plaintiff has suffered considerable, total and permanent damage to his left leg.

XV.

That as a result of all of the evidence in the case and particularly medical testimony, the Court is unable to find that the blood clot, referred to in Finding of Fact XIV, and the resulting damage therefrom, was caused by any injury he sustained when Fay R. Livingston fell upon him at the airport in Pocatello, Idaho, as found above.

From the foregoing facts the Court draws the following

Conclusions of Law

I.

That this Court has jurisdiction hereof, Section 1346(b), Title 28, U.S.C.

II.

That as a direct and proximate result of the said negligent and careless acts and omissions of the servant of the defendant, the United States of America, namely, Fay R. Livingston, acting within the course and scope of his employment, the plaintiff, Joseph P. Hennessey, was injured as aforesaid and is entitled to judgment against the defendant, the United States of America, as follows:

(A) Special damages: Doctor, \$12.00.

(B) Damage because of injury to plaintiff's shoulder, neck and back, \$2,500.00.

III.

Let judgment be entered in favor of the plaintiff, Joseph P. Hennessey, and against the defendant, the United States of America, for the sum of Two Thousand Five Hundred Twelve and no/100ths Dollars (\$2,512.00).

Dated this 24th day of November, 1954.

/s/ W. D. MURRAY,

United States District Judge.

[Endorsed]: Filed November 24, 1954.

Entered November 25, 1954.

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL AND
AMENDMENT OF FINDINGS

Comes now the plaintiff above named and moves the Court to grant him a new trial or in the alternative to amend the Court's Findings of Fact and Conclusions of Law upon the following grounds to wit:

I.

That the Court's Finding of Fact number XIV is inaccurate and is contrary to the weight of the evidence.

II.

That the Court's Finding of Fact number XV is contrary to the evidence.

III.

That the Court's Finding of Fact number XV was against the law.

In the alternative plaintiff moves the Court to Amend its Findings of Fact and Conclusions of Law as follows:

To substitute Court's Finding of Fact number XIV by finding in place thereof in accordance with paragraph one, three, four, five, six and seven (un-numbered) of plaintiff's proposed Findings of Fact and Conclusions of Law contained on pages 6, 7 and 8 thereof, from plaintiff's proposed finding 13.

To substitute plaintiff's proposed finding of fact

number 15 instead of Court's finding of fact number XV.

To amend Court's Conclusions of Law in accordance with the findings of fact as thus amended.

Wherefore, plaintiff moves that the Court amend and revise the findings of fact and conclusions of law herein in accordance with this motion, or in the alternative to grant plaintiff a new trial.

Dated this 4th day of December, 1954.

DOEPKER & HENNESSEY.

Attorneys for Plaintiff.

Service of Copy acknowledged.

[Endorsed]: Filed December 4, 1954.

[Title of District Court and Cause.]

ORDER

No. 1313

The Court has considered the plaintiff's motion for a new trial or in the alternative to amend the Court's Findings of Fact and Conclusions of Law, together with the argument and the briefs and authorities in support thereof, and has reached the conclusion that the motion must be denied in its entirety for the reasons hereinafter set forth.

As to the motion for a new trial, the Court cannot see that a new trial would avail the plaintiff anything. There is no question as to liability in the

case, the only question being one of proximate cause of the terrible condition which later developed in plaintiff. In the trial already had the Court had the benefit of the testimony of the physician who attended the plaintiff at the time the blood clot developed, together with the testimony of other experts and particularly Dr. Horst, who had made a thorough study of the case, and since the trial, has had the benefit of able and extensive arguments and briefs interpreting the evidence of the medical experts at the trial. It seems unlikely to the Court that upon a new trial there would be available to the plaintiff any additional evidence which would influence the Court in its decision. Certainly it seems unlikely that plaintiff could produce any evidence which would change the Court's view of the medical evidence presented on the first trial as hereafter discussed. In addition there has been no showing made of new evidence available to the plaintiff.

In regard to the motion to amend the Court's Findings of Fact and Conclusions of Law, the Court personally would like nothing better than to grant the motion. There is no doubt from the evidence that the plaintiff, Mr. Hennessey, suffered from a very painful and disabling affliction and will in the future continue to suffer. The Court, however, has its own duties and obligations and must be controlled by law. The rule of law, which the Court finds decisive in this case is that the burden of proof rests upon the plaintiff. In other words, while the Court, from its consideration of all of the evidence in the case, is not prepared to

say that Fay R. Livingston, falling upon the plaintiff, did not cause the blood clot and resulting damage therefrom in the plaintiff's legs, still the Court from all of the evidence cannot conscientiously find that Livingston, falling on the plaintiff, did cause the blood clot and resulting damage. In other words, after very serious consideration of the case, the Court, in common with Mr. Hennessey's attending physician, is unable to say what Mr. Hennessey's condition resulted from, or even what it probably resulted from, and in this frame of mind the Court's previous Findings of Fact must stand.

As an example of the state of the evidence which compels the Court to the conclusion it has reached, is the conflict in the testimony between the plaintiff's own medical experts. Dr. Stokoe, the attending physician at the time the catastrophe struck Mr. Hennessey, as well as the other experts who testified, with the exception of Dr. Horst, placed the embolus in the arteries of Mr. Hennessey, while Dr. Horst, in his testimony, placed it in the veins. In order to find the necessary connection between Mr. Hennessey's subsequent condition and the prior incident at the airport in Pocatello to justify a finding of proximate cause, the theory of Dr. Horst, who did not see the patient or examine him until several years later, must be accepted in its entirety, disregarding the findings of the physician who attended the plaintiff as the condition developed.

As stated, in order to find that Livingston, falling on Mr. Hennessey, was the proximate cause of the

blood clot, Dr. Horst's theory must be accepted, and there are circumstances which make it impossible for the Court to follow Dr. Horst's theory. One such circumstance is that all of the experts who testified, including Dr. Horst, agreed that in the event of a thrombosis in the deep veins such as Dr. Horst testified existed in the plaintiff, that collateral circulation of the blood would develop through the superficial veins near the surface and that visible signs of such collateral circulation would appear upon the patient's body. There were no such signs of collateral circulation in Mr. Hennessey's case.

Another difficulty in following Dr. Horst's diagnosis results from the time element, that is the time between the incident causing a pressure thrombosis and the appearance of the symptoms. Dr. Horst testified to the case of the runner who held his breath during the course of a race, thereby causing a pressure thrombosis in the vena cava. However, in that case the symptoms appeared almost immediately. In addition Dr. Horst submitted to the Court an article entitled "Deep Venous Thrombosis in the Leg Following Effort or Strain," printed in the New England Journal of Medicine of April 3, 1952, in proof of his theory that pressure could have caused the thrombosis which resulted in the embolism in Mr. Hennessey. In that article are 13 case histories of deep venous thrombosis in the leg following effort or strain. In each of the case histories the symptoms appeared within 2 or 3 or 4 days after the strain. The same article in discuss-

ing the diagnosis of a deep venous thrombosis, as distinguished from muscle strain, has the following to say:

“The stiffness, pain, and disability of a muscle strain are due to hematoma formation, and thus usually approach their height in four to twenty-four hours; the stiffness, pain and disability of a venous thrombosis follow the gradual establishment of a sufficient degree of venous blockade, which usually requires from two to seven days. The edema (if any) associated with a muscle strain appears in a matter of a few hours and is local; the edema of venous thrombosis does not appear for two to seven days and is diffuse.”

Thus the examples cited by Dr. Horst to prove that a deep venous thrombosis can occur from pressure makes it impossible for the Court to accept his theory in this case. The examples which he cited all state that the symptoms of a pressure or strain caused deep venous thrombosis will occur within from two to seven day after the pressure or strain, whereas in Mr. Hennessey's case the symptoms did not appear until some eight months after the accident which Dr. Horst contends caused the thrombosis.

There is this further difficulty: if the Court could accept the fact that it would take eight months after the causing of a thrombosis in the vena cava in the manner surmised by Dr. Horst for the symptoms to develop, why might it not take three or four years? Several years before Mr. Livingston

fell on the plaintiff, the plaintiff was involved in an automobile accident, in which his immediate symptoms were identical to those he had after Mr. Livingston fell upon him at the airport in Pocatello. There is no satisfactory evidence in the record to differentiate between these two injuries, the immediate symptoms, diagnosis and treatment of which were identical. If a deep venous thrombosis could exist for some eight months before making its unfortunate appearance as an embolism, why could it not exist several years? There is no explanation in the record.

Finally, according to Dr. Horst's theory, the thrombosis occurred in the vena cava and when it became dislodged it went down into the legs against the flow of blood. In all of the literature that the Court has been able to find concerning this subject and according to the weight of the evidence in this case, when a thrombosis of the vena cava becomes detached the resulting embolus follows the flow of blood and results in a pulmonary embolism. In the article copied by plaintiff from the "Surgery, Gynecology and Obstetrics with International Abstract and Surgery" Journal, and submitted to the Court, there are several references to the breaking loose of a thrombus from the vein wall and it is stated "The sudden massive pulmonary emboli usually arise from this type of thrombus." It is further stated in that article "Bland thrombosis is usually not recognized until a massive pulmonary embolism has occurred." Both of the above quota-

tions refer to bland thromboses, a type of thrombosis which develops slowly and without making its presence known, and Dr. Horst explained the delay between the accident at the airport in Pocatello and the onslaught of the embolus upon the ground that the thrombus, which formed, was a bland thrombus. However, as noted before, in each of the examples furnished to the Court of a pressure or strain caused thrombosis, the thrombosis was anything but bland, and made its presence known within a relatively short time. The article last referred to states that a bland thrombosis results from the mildest form of irritation or injury to the blood vessel, whereas, Dr. Horst's theory in this case envisions violent and extensive injury to the vena cava, thus making it unlikely that a bland thrombosis would have resulted.

In view of the foregoing, It Is Ordered and this does order that the plaintiff's motion for new trial or in the alternative to amend the Court's Findings of Fact and Conclusions of Law be and the same hereby is denied.

Done and dated this 29th day of August, 1955.

/s/ W. D. MURRAY,

United States District Judge.

[Endorsed]: Filed August 29, 1955.

Entered August 30, 1955.

In the United States District Court for the
District of Montana, Billings Division

No. 1313

JOSEPH P. HENNESSEY,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

JUDGMENT

The Court having filed its findings of fact and conclusions of law herein directing the entry of judgment in favor of the plaintiff and against the defendant and thereafter the plaintiff having moved the Court to grant him a new trial or in the alternative to amend the Court's Findings of Fact and Conclusions of Law which motion was, by the Court, denied, it is

Adjudged, that the plaintiff, Joseph P. Hennessey, do have and recover of the defendant, The United States of America, the sum of Two Thousand Five Hundred Twelve and no/100ths (\$2,512.00) Dollars.

Done this 28th day of November, 1955.

/s/ W. D. MURRAY,
Judge.

[Endorsed]: Filed November 28, 1955.

Entered November 29, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Now comes the plaintiff, Joseph P. Hennessey, and hereby gives notice, that said Joseph P. Hennessey, hereby appeals to the United States Court of Appeals for the Ninth Circuit, from that certain judgment, deemed grossly inadequate, as to damages, rendered and entered in favor of the plaintiff and against the defendant on November 24th, 1954, after Motion for New Trial and Amendment of Findings denied by the final judgment of said District Court signed and filed November 28th, 1955, and entered herein on November 29th, 1955.

DOEPKER & HENNESSEY,
Attorneys for Appellant.

By /s/ M. J. DOEPKER.

Service of Copy acknowledged.

[Endorsed]: Filed January 25, 1956.

[Title of District Court and Cause.]

BOND ON APPEAL TO UNITED STATES
COURT OF APPEALS FOR NINTH CIR-
CUIT

Know All Men by These Presents:

That the undersigned Surety is held and firmly bound unto the United States of America in the full and just sum of Two Hundred Fifty (\$250.00)

Dollars, to be paid to said United States of America, to which payment, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally by these presents. Sealed with the Corporate Seal of said Surety Company this 20th day of January, 1956.

Whereas lately in the United States District Court for the District of Montana, Billings Division, in a suit pending in said Court between Joseph P. Hennessey, plaintiff, and the United States of America, defendant, judgment was rendered in favor of the plaintiff for an amount which plaintiff deems grossly inadequate and said plaintiff Joseph P. Hennessey has taken an appeal to the United States Court of Appeals for the Ninth Circuit, to reverse the said judgment for inadequate damages and to assess adequate damages against defendant.

Now, the condition of the above obligation is such that if the said Joseph P. Hennessey, plaintiff above named, shall prosecute said appeal to effect and answer all damages and costs if he fail to make good the said appeal, then the above obligation to be void, else to remain in full force and virtue.

Signed with the seal of said Surety impressed, with the signature of its proper officer and attorney in this behalf authorized, this 20th day of January, 1956.

UNITED STATES FIDELITY AND GUAR-
ANTY COMPANY, a Bonding Corporation,
as Surety.

[Seal] By /s/ H. A. KAWIN,
Attorney-in-Fact,
Its Duly Authorized Officer.

Countersigned:

EXCELSIOR INSURANCE
AGENCY,

By /s/ DON L. ENGLEKING,
Montana Licensed Agent.

[Endorsed]: Filed January 25, 1956.

In the United States District Court for the
District of Montana, Billings Division

No. 1313

JOSEPH P. HENNESSEY,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

PORTIONS OF THE OFFICIAL REPORTER'S
RECORD CONTAINING TESTIMONY OF
WITNESSES FOR INCLUSION IN THE
TRANSCRIPT OF RECORD TO THE
COURT OF APPEALS FOR THE NINTH
CIRCUIT

EXHIBIT "A" ON APPEAL

The above cause came on regularly for trial before the Hon. W. D. Murray, United States Dis-

trict Judge for the District of Montana, sitting without a jury, at Billings, Montana, on the 15th day of January, 1953. The plaintiff was present in person, and represented by his counsel, Messrs. Mark J. Doepker and Maurice F. Hennessey, and the defendant was represented by its counsel, Mr. Emmett C. Anglund, Assistant United States Attorney for the District of Montana.

Whereupon, the following proceedings were had:

JOSEPH P. HENNESSEY

the plaintiff, called as a witness on his own behalf, being first duly sworn, testified as follows:

Direct Examination

By Mr. Doepker:

Q. Please tell the Court your name?

A. Joseph P. Hennessey.

Q. And what was the date of your birth?

A. January 17th, 1917.

Q. And are you married or single?

A. Married.

Q. Do you have some children?

A. Three children.

Q. Their ages?

A. One girl five years old, a boy eight years old, and a girl nine years old.

Q. Are those children healthy or unhealthy?

A. Healthy.

Q. During the record of your married life, has there been any miscarriages? A. None.

(Testimony of Joseph P. Hennessey.)

Q. What is your occupation?

A. Attorney at law.

Q. Address?

A. 1221 Grand Avenue, Billings, [6 & 7*] Montana.

Q. Where do you have your offices?

A. The Selvidge-Babcock Building, Billings, Montana.

Q. Is your father living or dead?

A. He is dead.

Q. And do you know the cause of his death?

A. He died from some type of internal injury.

Q. In the year? A. 1943.

Q. Is your mother living? A. Yes.

Q. What is the condition of her health?

A. So far as I know, it is good.

Q. What other members of your family are there?

A. I have a younger brother and a sister.

Q. And was there one of your brothers killed in the war?

A. I had a brother killed in the Philippines during the war.

Q. So far as you know, what are their general conditions of health?

A. The general health of my brother and sister is good.

Q. Do you know of any history of tuberculosis in your family? A. None.

(Testimony of Joseph P. Hennessey.)

Q. Insanity? A. None.

Q. Epilepsy? A. None. [8]

Q. Or cancer? A. None.

Q. Mr. Hennessey, during your early childhood, what, if any, childhood diseases did you have?

A. I believe I had the usual childhood diseases like mumps and measles.

Q. Did you have scarlet fever?

A. No, sir.

Q. Diphtheria? A. Not that I remember.

Q. St. Vitus dance? A. No, sir.

Q. Heart trouble? A. No, sir.

Q. Rheumatism? A. No, sir.

Q. Poliomyelitis? A. No, sir.

Q. In or about the year 1933, did you have any illness?

A. I developed pneumonia the winter of that year and was confined in St. James Hospital in Butte, Montana.

Q. For about what period of time?

A. I believe that was for about two months.

Q. And at that time, Mr. Hennessey, what, if any complications developed from this [9] pneumonia. A. I developed acute nephritis.

Q. And then from a layman's standpoint, will you tell us what the development of that disease was at that time?

A. Well, it is a kidney disorder that causes an edema or swelling of the stomach.

Q. And what was your recovery—state whether or not you had a recovery from that condition?

(Testimony of Joseph P. Hennessey.)

A. So far as I know, after a period of time, I had a complete recovery.

Q. During the war, did you take any examination with the Civil Aeronautics Authority for flying in the Air Corps? A. I did.

Q. And did you fly? A. I did.

Q. After taking that examination?

A. I did, sir.

Q. Were you rejected by the Army on account of the history of nephritis? A. I was.

Q. Also by the Navy? A. Yes, sir.

Q. And by the Air Corps?

A. Yes, sir. [10]

Q. Do you know at this time of your own knowledge whether there was any clinical finding such as albumin, or anything of that sort at that time?

A. I know there were none on at least one Naval examination.

Q. So that we can get some idea of your occupations after this sickness that you had in St. James Hospital in 1933, what did you do after you came out of the hospital?

A. Let's see, I had some high school work to complete, and I went back to high school and completed that work, and then I left the State of Montana and went to California.

Q. Did you follow an occupation or work during the time you were in California?

A. I did various types of work, whatever I could do.

Q. Later did you work elsewhere?

(Testimony of Joseph P. Hennessey.)

A. Well, I worked the year following that out of Minneapolis, Minnesota, as a salesman.

Q. And what have you to tell the Court as to the regularity of your employment? Were you laid off at any time, or did you lay off at any time on account of illness? A. No, sir.

Q. Would that be true from the time you left the hospital? A. That would be true.

Q. Now, after your work as a salesman in Minnesota, or out of Minneapolis, when did you return to Montana?

A. I believe it was in 1937, if I remember right.

Q. And then, what, if any, training did you secure?

A. Well, I went to the School of Mines and took some pre-law, [11] then I went down to the University of Montana and completed the pre-law, and I went to Law School and graduated from the Law School.

Q. Did you pursue a regular course at the University of Montana? A. I did.

Q. Graduating in what year? A. 1943.

Q. Did you receive any degrees?

A. I have a B.A. in History and Political Science, and an L.L.B. in Law.

Q. While in college, did you take part in athletic sports? A. No, sir, I did not.

Q. Did you take part in athletic sports in high school? A. A little, yes.

Q. Now, after graduation from the college, where did you practice, if you did?

(Testimony of Joseph P. Hennessey.)

A. I went to Butte, Montana and practiced.

Q. Then subsequently located where?

A. In Billings, Montana.

Q. When did you locate in Billings?

A. In 1944.

Q. Since 1944, and up until the year 1949, will you say whether or not you were actively engaged in the practice of law? [12]

A. I was actively engaged.

Q. In what field, if any, did you specialize?

A. With mostly trial work, I would say.

Q. During that time that I have indicated, what was the condition of your general health?

A. It was good.

Q. And what with respect to your activity in your profession?

A. I was very active.

Q. And during that period of time that I have indicated, up to the year 1949, in your practice, were you disabled or in the hospital at any time to your recollection?

A. No, sir, I was not.

Q. From 1949, and up until the first part of January, 1950, did you have any illness, or were you confined to St. Vincent's or the Deaconess Hospitals here in Billings?

A. Sometime during the fall of 1949, I was confined to St. Vincent's Hospital.

Q. And do you know what it was?

A. I believe it was for acute laryngitis.

Q. In 1950, did you have occasion to be in a hospital in the first part of the year?

A. As I recall, the laryngitis came back and I

(Testimony of Joseph P. Hennessey.)

lost my voice again, and I was confined in the Deaconess Hospital the first of January, about January 3rd.

Q. Mr. Hennessey, in the course of your business, did you [13] have occasion to visit Pocatello, Idaho?

A. In the latter part of May of 1949, I had a hearing set in Federal Court in Pocatello, Idaho.

Q. Now, we have gone over up to the first part of January, 1950, we have gone over the record or history of your illness and hospital attendance; and I want to inquire whether you were in any other accidents prior to the year 1949?

A. I was in an accident in 1947.

Q. Will you relate and tell the Court what that was?

A. I rolled my automobile over between Toston and Three Forks, and I believe that was sometime during the summer of 1947.

Q. As best you can describe to the Court, what happened in that automobile accident?

A. Well, the damage to the car when the car turned over, but myself, I seemed to have a sore shoulder as a result of it.

Q. Then, will you relate to the Court with respect to that sore shoulder. What was the development of that?

A. Well, after the wreck, I stayed in Three Forks that night. I had the car taken care of and came in to Billings, Montana, the next day, and I

(Testimony of Joseph P. Hennessey.)

went to the doctor, and he examined the shoulder, and I believe he gave me some diathermy treatments, and after about six months, I think it was, the shoulder got well.

Q. From the time this accident occurred that you have [14] referred to when the car turned over, and after that period of six months, did you notice any soreness or pain or discomfort in the shoulder?

A. No, sir.

Q. Which shoulder was that?

A. The right shoulder.

Q. And from a layman's standpoint, did you appear to recover from that accident?

A. I would say so, yes, sir.

Q. Were you in any other accidents prior to the summer of 1949?

A. Well, one night, I believe, in 1948, Northwest had an accident in Butte with one of their airliners, and I was on that airliner that night.

Q. Were you to your knowledge, or any other passengers, injured in that incident?

A. To my knowledge, none of them were injured.

Q. What was the nature of the accident?

A. The plane was coming in for a landing, and I believe he overshot his field and wound up in the graveyard.

Q. Did you notice any ill effects at all from that incident you have now related to the Court?

A. My belly muscles were a little sore the next morning, and that is about all.

Q. Were you strapped in at the time of the

(Testimony of Joseph P. Hennessey.)

landing, strapped [15] into the seat?

A. Yes, sir.

Q. Now, coming to the summer of 1949, and the incident of your having appeared in Federal Court in Pocatello, what, if anything, occurred on or about that time, just generally, I just want you to identify that incident?

A. Well, after, I had a reservation on Western Air Lines going north on June 2nd from Pocatello.

Q. All right, and in response to your reservation, will you say whether or not you visited the airport on that occasion?

A. I believe that plane left Pocatello some time a little after two o'clock, and I took the airport cab from the hotel at whatever time that cab left, and I went out to the airport.

Q. Now, what was your purpose in going to the airport?

A. To take that north bound flight to Butte.

Q. Do you know the date of it?

A. I believe it was June 2nd.

Q. And the year? A. 1949.

Q. With respect to this airport, Mr. Hennessey, will you describe to the Court the facilities, if any, the public facilities with respect to the toilet facilities for passengers or people working around the airport?

A. Well, they had the usual men's rest room with the usual [16] accouterments of a rest room.

Q. Were the men's and ladies' rest rooms indicated from the lobby or waiting room of the airport?

(Testimony of Joseph P. Hennessey.)

A. The men's rest room was; I don't know about the other one.

Q. Now, on the occasion of your going to take the plane, you say it was in the afternoon?

A. It was in the afternoon, yes, sir.

Q. And approximately——

A. Well, the plane left shortly after two; I don't remember when exactly now, and it was sometime, I would say, between 1:30 and 2:00 o'clock.

Q. All right, and did you have occasion to use any of the facilities that you have testified to on that afternoon?

A. Yes, while waiting for the plane, I went to the rest room and was washing my hands.

Q. Now, were you washing your hands in a lavatory or basin with which this men's toilet room was equipped?

A. Yes, I was.

Q. What is your height?

A. Six feet and one-quarter.

Q. And do you recall the position of these lavatories?

A. I had to reach down to reach into them.

Q. Then, in order to be washing your hands, you would be in what position, somewhat?

A. I would be sort of standing in front of the lavatory, and [17] reaching down into the lavatory.

Q. Now, at that time, was there any other person to your knowledge that was occupying or was in that room with you?

A. There was one other gentleman.

Q. At that time did you know his name?

(Testimony of Joseph P. Hennessey.)

A. I did not.

Q. Can you identify him by subsequently meeting him? A. Yes, sir.

Q. What is his name?

A. His name was Mr. Wright.

Q. Now, then, while you were there bending over washing your hands on that occasion, did anything unusual occur?

A. An object fell from above me and upon me. I later discovered that object to be a man.

Q. And approximately where did the impact occur?

A. Across my right shoulder and small of my back.

Q. Now, you, of course, I presume, were not expecting anything of that kind? A. No, sir.

Q. Were you braced or not? A. No, sir.

Q. What was the effect, if you can recall, of this man striking you—I mean what was the effect of it with respect to the immediate reaction on your part?

A. There was an immediate jar, and he seemed to kind of shake [18] me. I didn't go down, it seemed to shake me and start to crush me.

Q. You didn't fall to the floor?

A. Not completely, no, sir.

Q. After this man had fallen on you in that position, what did you notice right at that time?

A. As I went to brush myself off, why I noticed a catch in my right shoulder.

Q. Will you say whether or not, Mr. Hennessey,

(Testimony of Joseph P. Hennessey.)

right at that time did you consider it a serious matter? A. I did not.

Q. Then, what occurred then immediately after that?

A. The gentleman who was in there with me asked me if I was hurt, and I said, "I don't believe so"; and the fellow that had fallen to the floor asked something, I don't know, and I think I said something like, "It's a good thing you are not any bigger than you are or you would have crushed me," or something like that.

Q. Then at that time did you say anything or mention anything to Mr. Wright or anybody else about your shoulder?

A. I believe it was Mr. Wright that asked me if I was hurt, and I think I said, "I just have a catch in my shoulder."

Q. Then did you report this incident to anybody at the office of the air lines at that time?

A. I believe Mr. Wright and I walked over to the desk in the [19] main part of the building, and I think he reported it to the girl back of the desk.

Q. And was inquiry made at that time as to whether you considered you had been hurt?

A. I don't recall whether there was or not.

Q. Now, will you say whether or not on that occasion you took the plane? A. I did.

Q. And came to your destination at Butte?

A. Yes, sir.

Q. Then when did you next arrive in Billings?

(Testimony of Joseph P. Hennessey.)

A. I stayed in Butte that evening, and late that evening I went to Three Forks, Montana, and I caught the train the next day from Three Forks to Billings.

Q. After getting to Billings, what did you discover with respect to your shoulder?

A. It was sore and stiff and I couldn't lift the arm.

Q. And whom did you consult at that time with respect to treatment for the shoulder?

A. I went to see Dr. Harry Soltero.

Q. Is he the same physician you had consulted at the time of your car accident at Butte?

A. He was, sir.

Q. And did Dr. Soltero treat you for this condition? A. He did. [20]

Q. Did you notice any other trouble after you got back to Billings?

A. I seemed to have pain in my back, but didn't complain much about it.

Q. To what extent, was it all over your back?

A. Just in the small of the back.

Q. Now, did that condition clear?

A. The back did.

Q. The back and shoulder?

A. The back did; the shoulder I don't believe is cleared up even today.

Q. Did the shoulder cause you any disability from performing any of your work around the house, or anything of that sort?

A. It didn't affect me in the office too much out-

(Testimony of Joseph P. Hennessey.)

side of the nuisance and pain of it and the agony of it, I wouldn't say too much, no, sir.

Q. Now, then, you have already related about going to St. Vincent's hospital in the fall of 1949 for an attack of laryngitis? A. Yes, sir.

Q. At that time do you recall how long you were in the hospital?

A. Three or four days, I think.

Q. And then at that time did you come back to your office to work? [21] A. Yes, sir.

Q. Now, then, later on in the latter part of 1949, or the early part of 1950, what was the circumstances regarding this subsequent attack?

A. I seemed, the first part of the year, I seemed to get another cold, and then one day it had come back; my voice was completely gone, and when I left my office at five o'clock, I went to the doctor.

Q. At that time did you consult the Soltero Clinic? A. Yes, sir.

Q. Which doctor did you consult at that time?

A. Dr. R. S. Stokoe.

Q. He is a physician here in Billings, is he?

A. He is, sir.

Q. Were you hospitalized at that time?

A. I was.

Q. Now, do you recall the date you went to the hospital in January?

A. I think it was January 3rd, 1950.

Q. Will you relate to the Court with respect to the hospitalization on January 3rd, 1950, were you confined to your bed?

(Testimony of Joseph P. Hennessey.)

A. I was, except I had bathroom privileges, if I remember.

Q. But during this period from January 3rd, immediately following, about how much of the time did you spend in a recumbent or reclining position? [22]

A. Oh, all of it, except when I went to the bathroom.

Q. Then, what was the progress of this attack of laryngitis or whatever it was you had at that time?

A. It got better, and I believe, I think it was Saturday morning, January 7th, it was pronounced cured.

Q. What happened?

A. Then right after that, I think the doctor told me I could get up and go home.

Q. Did you make arrangements to go home then at that time?

A. As I recall, I believe it was a Saturday, and I didn't want to get down town until after one o'clock, as my office would be closed at one, and I told him I would have lunch in the hospital and then I would go down.

Q. During that morning, then, did something happen?

A. As I was getting ready to go to town, I believe I was partially dressed—I had a room with an adjoining bath—I went into the bath, and I was washing my teeth, I think, and my left leg seemed to go to sleep.

(Testimony of Joseph P. Hennessey.)

Q. What did you do, did you make a report of that then?

A. There was either a nurse or a nurse's aid in the room when I came out, and I told her my left leg was asleep.

Q. Then what was done then at that time?

A. She told me I had been in bed for three days, and it probably was all right, that it would clear up, and I went on back into the [23] bathroom.

Q. What did you next discover?

A. While I was in there, the right one started going asleep. I went back out into the room and told her both legs were asleep.

Q. Then where did this feeling of the leg being asleep, as you say, where did that start?

A. I don't know, it encompassed the whole leg.

Q. What was the extent of it—were you able to stand on your legs at that time?

A. The second time I reported to her, I couldn't stand.

Q. What can you tell us then about the 7th day of January, 1950, with respect to how this developed, from a layman's standpoint?

A. As I recall, I came out of the toilet, both legs were asleep. I started to keel over, and I think—I don't know whether I went down into a chair or onto the side of the bed. They took my clothes off and put me back to bed and sent for the doctor.

Q. And then did the doctor show up then about that time? A. I believe he did, yes, sir.

(Testimony of Joseph P. Hennessey.)

Q. What, if anything, was done at that time?

A. Well, frankly, I don't know, it is not too clear in my mind.

Q. Well, tell us what you do remember next then with respect to this condition that [24] developed

A. Well, I don't know, I have—there is sort of a hazy proposition in there of being stuck with needles and pushed around and I don't know how much of a lapse in time was in there. One morning I noticed I was in bed and that they had the bars up on the bed.

Q. With respect to your person what did you notice what occurred?

A. I noticed I had extreme pain in my legs.

Q. What else did you observe when you came sufficiently to yourself to observe your legs, what did you notice about them?

A. I noticed that the left leg was extremely painful and it was subject to jumping all over, subject to spasms, and I believe the left leg was then under a hood to keep the sheets off of it, or else later they put it under, I am not too sure.

Q. Would the touch of the sheet, would that result in pain in the leg? A. It would, sir.

Q. And the spasms you speak about, what were the nature of those spasms?

A. They would run the whole length of the leg and cause the leg to convulse; it would draw up and drive out of its own volition.

(Testimony of Joseph P. Hennessey.)

Q. During this period of time did you suffer any pain? A. I did.

Q. To what extent? [25]

A. It was extreme.

Q. What would be, or what was the effect then with the pain in your left leg and the reaction in the right leg?

A. By then they had put what they call a foot board into the bottom of the bed, and sometimes when this left leg would become spastic and would feel as if it was going to jump if you touched it, the right leg would be the one that jumped as the spasm went down the left leg, and the right leg would drive into the foot board and the left leg lay stationary.

Q. Did you notice any change in the color of the left and right leg during the time you were able to observe?

A. The left leg was sort of a purplish color.

Q. What with respect to the right?

A. The right leg seemed to be all right.

Q. These spasms that you related, what were the frequency, if any, of those attacks?

A. I would say they were quite frequent.

Q. Quite frequent might be anything in the record.

A. Well, for the first, say for the first two or three months, two months, there would probably be one or two an hour or more.

Q. What would be the extent and lasting of these spasms?

(Testimony of Joseph P. Hennessey.)

A. Some would be of short duration, and some of, say a minute or two, and some would be of longer duration, five or ten minutes. [26]

Q. What was the effect of this condition upon your ability to rest? A. I couldn't rest.

Q. With respect to sleep?

A. I couldn't sleep.

Q. What, if anything, was done from a layman's standpoint that you can relate to the Court in the treatment of this condition?

A. I was given repeated hypoes, and I believe I was given a series of what they call spinal blocks and other things, I guess.

Q. Was there any massaging or manipulations of the leg?

A. The latter part of my stay in the hospital they commenced a course of physiotherapy on my left leg.

Q. During the time in the hospital, did you have any voluntary control over your left leg?

A. No.

Q. Was there anything done about moving the leg at intervals?

A. I believe when they wanted the leg moved that a nurse came in and moved it.

Q. Later on, what, if anything, was done with respect to the treatment of this condition beside the physiotherapy and rubbing and manipulations?

A. While still in the hospital?

Q. Yes. [27]

A. They gave me a series of Buerger exercises.

(Testimony of Joseph P. Hennessey.)

Q. Will you describe those to the Court, please?

A. The Buerger exercise—they have what they call a Buerger board, which seems to me more of a wooden rectangle with a slanting plane toward the body of the patient, they keep putting into the bed, and when the leg is placed upon the board, it will hold it in a diagonal position up from the bed, and with the use of that board, you move the leg from the bed to the board and up to the edge of the back and hang it down, and back to the bed and up onto the bed, in a series like that.

Q. Was that what you have referred to as Buerger exercises? A. Yes, sir.

Q. Now, how long were you in the hospital that they were giving you the attention that you have described?

A. I believe January, February and March of 1950.

Q. And you left the hospital, then, on or about what date?

A. I believe it was the last of March, 1950.

Q. Then, Mr. Hennessey, at the time you left the hospital, what was the manner of your getting out of the hospital?

A. Well, I got into a wheel chair and they rolled me out to an automobile, and I went to the Northern Hotel. I went into a room at the Northern Hotel; I went out on a wheel chair.

Q. What was the purpose of going from the hospital to the Northern Hotel? [28]

A. Well, I wanted to get out; I was getting

(Testimony of Joseph P. Hennessey.)

kind of tired of the place, and I think I finally talked the doctor into letting me go.

Q. Was the reason for going to the Northern Hotel some facilities for you being able to get around a little bit?

A. It was because it was close to any place I might have to go; it was close to the doctor's office; it was close to the Billings office where I was taking my therapy, and the Northern Hotel had an elevator and telephone service, which I figured I would have to have if I was to be out.

Q. Were you using this as a means of convalescence? A. I was.

Q. How long did you remain under those circumstances at the Northern Hotel?

A. About two months, I believe.

Q. Then besides the wheel chair, what was the means of your getting around?

A. Well, shortly before leaving the hospital, I had been allowed to use crutches for short periods of time. I was learning to use crutches.

Q. Were you continuing to use crutches while you were convalescing at the Northern Hotel?

A. I did, yes, sir.

Q. Can you tell the Court the effect of having your leg down or hanging down? [29]

A. I seemed to have no tolerance, and the blood would rush to the leg, and it would cause it to be acutely discolored and cause a great deal of pain.

Q. For what length of time, approximately, did this condition continue when your leg would be

(Testimony of Joseph P. Hennessey.)

down in a normal position of daytime activity that you suffered this pain? How long did that continue to be that way?

A. Eight or nine months after I got out of the hospital.

Q. What was your method of obtaining relief?

A. If I were in my office, I would put my leg up on the desk so it could be held in a horizontal position, or anywhere else, I would put it up on a chair or anywhere else so long as I got it up into a horizontal position.

Q. Was there any time during the period of time you have related to the Court that you were free from pain? A. No, sir.

Q. And the swelling and change of color in your leg, did that condition continue also?

A. It did.

Q. You mentioned during the course of your testimony that you went to the Billings Clinic?

A. That's right.

Q. What was the purpose of going to the Billings Clinic?

A. They had a therapy tank, a hydrotherapy tank, and I went there to take hydrotherapy and physiotherapy on the leg. [30]

Q. Was that hydro and physiotherapy administered at the clinic? A. It was.

Q. Describe the treatment to the Court?

A. A hydrotherapy tank, it looks like a deep wash tub that is filled with water at, I believe, 110

(Testimony of Joseph P. Hennessey.)

degrees, and it has some type of an air arrangement, or a motor, that causes a whirlpool in this hot water, and your leg is placed in the tank with this water gyrating around in this whirlpool effect.

Q. How long did you continue taking those treatments?

A. For a couple of months, I believe.

Q. Then did you administer—did you use hot water treatments yourself subsequently at home?

A. I soaked it every day, sometimes twice.

Q. Would that be in hot water, also?

A. Yes, as hot as I could stand it.

Q. How long did these treatments continue, Mr. Hennessey, these treatments you have related to the Court?

A. About a year and a half; even today I have to do it.

Q. Will you state to the Court what, if any, progress towards recovery you have observed?

A. Up until about a year and a half ago, I seemed to get gradually better and to get around better, but in the last year I don't notice any progress whatsoever.

Q. What is the present condition of your leg? [31]

A. Well, I have an ankle lock in my left ankle; the toes of my left foot are deformed; the left foot is highly sensitive, and neither leg is worth much so far as walking on them is concerned; they both go haywire.

Testimony of Joseph P. Hennessey.)

Q. What has been your experience in the past year?

A. I can walk about one block; then I get severe cramps deep in the calves of both legs, and I can force myself to walk an additional block, and then I have to sit down, that is all there is to it.

Q. The condition that you have described, is that present with you at the present time?

A. It is, sir.

Q. And in connection with the leg, are you able to keep it down now without the pain you suffered during the first part of this history after you came out of the hospital?

A. The left leg, if I keep it down too long now, gets numb.

Q. What, if anything, can you tell the Court about the symptoms that you have at the present time with respect to the leg?

A. Well, the left leg, I can't, if I sit too long, the left leg bothers me, and if I stand on it too long, it will start to hurt, then it has to be moved. In other words, you can't keep it at any one spot for any too long a time. The right foot is sensitive. If you are walking along and step on something, why it sends a pain up right through the foot. The right ankle, [32] of course, doesn't work.

Q. Are you referring to the left ankle?

A. The left ankle.

Q. Your difficulty is primarily with the left leg and left foot, isn't it?

A. That's right.

(Testimony of Joseph P. Hennessey.)

The Court: You have been sitting there quite awhile so the Court will take a short recess. Court will stand in recess until 11:30.

(Ten-minute recess.)

The Court: Leave is granted to withdraw the witness.

(Witness temporarily withdrawn.) [33]

JOSEPH P. HENNESSEY

the plaintiff, recalled as a witness on his own behalf, being first duly sworn, testified as follows:

Further Direct Examination

By Mr. Doepker:

Q. Now, at the time of the recess, Mr. Hennessey, we were discussing the present condition with respect to your left foot, and what is the circumstances at the present time with respect to the movement of the foot?

A. I can move the foot to the left or right or down, but I can't lift it up.

Q. Can you extend the foot backward?

A. No, sir.

Q. In walking, what arrangements do you have so you can walk with balance?

A. I have a booted shoe on the left foot.

Q. Does it have a spring constructed——

A. Heel.

Q. ——base of heel?

A. Yes, sir.

(Testimony of Joseph P. Hennessey.)

Q. So far as a layman could tell, have you had any trouble with your heart? [35]

A. Not that I know of, sir.

Q. Or have your kidneys caused you any difficulty?

A. Not since the original deal back in 1933.

Q. Since that time have you had any difficulty from a layman's standpoint with your kidneys that you know of?

A. No, sir.

Q. And what has been your weight, as a rule?

A. Well, between 175 to 185 pounds.

Q. And with respect to your lungs, have you ever had, to your knowledge, any trouble with your lungs?

A. I have not.

Q. The difficulty that you have encountered has been confined to the bronchitis, has it, or the hoarseness?

A. Yes, sir.

Mr. Doepker: With your Honor's permission, for the sake of the accommodation of the medical profession, and also so that on this feature of the case that cross-examination may be had, may we withdraw Mr. Hennessey after he has cross-examined as to these matters, and put him on later on the other features of the case?

The Court: Yes—what other features?

Mr. Doepker: The question of damages and so on.

The Court: There is no objection?

Mr. Angland: I see no objection if he is going to restrict it to that. I can't think of any other features. [36]

(Testimony of Joseph P. Hennessey.)

Mr. Doepker: Earning capacity and his work, and how it has interfered with his work and things of that kind.

Mr. Angland: I thought you had already pretty well covered interference with his work.

Mr. Doepker: I don't want to inconvenience the Court.

The Court: Get the doctors on as soon as possible.

Mr. Doepker: One doctor has been called back for examination with the Navy. I don't want to inconvenience the Court too much.

The Court: It is all right with me.

Mr. Angland: I have no objection just so we don't get into matters that might be required for examination of the doctors.

Cross-Examination

By Mr. Angland:

Q. Mr. Hennessey, is this the first time you have filed a lawsuit arising out of this case?

A. No, sir.

Q. Was the nature of any other case you filed the same or different?

A. Well, there was one filed against Western Air Lines arising out of the same incident.

Q. Where did you file an action against the Western Air Lines? [37]

A. Silver Bow County.

Q. In the District of Montana?

A. District Court of Montana.

(Testimony of Joseph P. Hennessey.)

Q. The Second Judicial District?

A. That's right.

Q. I will hand you, Mr. Hennessey, what has been identified as Defendant's Exhibit 3, and ask you to examine it please? A. Yes, sir.

Q. Mr. Hennessey, does that appear to be an accurate record of the proceedings in the District Court of the Second Judicial District of the State of Montana? A. It appears to be.

Q. Of the action that you filed against Western Air Lines? A. It does, sir.

Q. Directing your attention, Mr. Hennessey, to the complaint which you filed in that case, and particularly the allegations of paragraphs—I believe it is paragraph 6, does that paragraph of that complaint begin “that as a proximate result of said negligence”? A. That's right.

Q. Will you read that paragraph of the complaint?

A. (Reading): “That as a proximate result of said negligence of the defendant and its servant who was then and there engaged in the scope of his employment by defendant and for its benefit and of said servant's falling upon the plaintiff, he [38] “was thrown violently to the floor, plaintiff's neck and shoulder were badly wrenched and his back was sprained, the muscles, tissues and tendons of his neck and right shoulder were torn, bruised, contused and made stiff, sore and painful for most of the time since said casualty; the muscles, tissues and tendons of the cervical, dorsal and lumbar

(Testimony of Joseph P. Hennessey.)

spine were strained and the right supraclavicular nerve was crushed, all of which injuries, proximately caused by the negligence of the defendant and its servant has caused the plaintiff to suffer great physical and mental pain and great shock, all of which has impaired the plaintiff's ability to work and follow his occupation to his great damage in the sum of Two Thousand Eight Hundred Fifty Dollars."

Q. Now, will you read the prayer of the complaint?

A. (Reading): "Wherefore, plaintiff prays judgment against defendant for the sum of two thousand nine hundred seventy-five dollars and for his costs herein expended."

Q. Mr. Hennessey, as a matter of fact, you weren't thrown violently to the floor at the time of that accident, were you?

A. No, sir, I was not.

Q. Did you receive hospitalization or medical care, Mr. Hennessey, for tissues and tendons of your neck and right shoulder that were torn?

A. No hospitalization. I received medical care for that shoulder after returning to Billings. [39]

Q. Did anyone treat you other than Dr. Soltero, did you state? A. No, sir.

Q. He is the only one that treated you?

A. He is the only one.

Q. Did you report at the time of this accident, did you yourself report to anyone connected with the air lines that you had been injured?

(Testimony of Joseph P. Hennessey.)

A. I believe I did, Mr. Angland. I believe I walked to the desk with Mr. Wright. He reported the incident that had occurred, and I believe I said I didn't think I was injured.

Q. Do you know who he talked with?

A. No, I don't; it was a young lady back of the desk. I don't know what her name was.

Q. Did you inquire for the airport manager?

A. I did not.

Q. Did you report the matter to the hostess of the air liner after it left for Butte?

A. I did not.

Q. The first you knew you had been injured at all was the next day when you arrived in Butte, is that it?

A. The next day, yes, that's right.

Q. You were in Butte the next day?

A. I was back in Billings the next day.

Q. You were back in Billings the next day, I beg your pardon. [40] Did you consult the doctor then?

A. I did.

Q. How often thereafter did you consult the doctor with reference to this condition of your neck and shoulder, the muscles, tissues and tendons of your neck and right shoulder?

A. I believe I took three diathermy treatments from him on that neck and shoulder.

Q. Over a period of time?

A. It was over, I believe, a period of four days, or maybe a week. It was right in a period of a short period of time.

Q. Immediately following the accident?

(Testimony of Joseph P. Hennessey.)

A. Immediately following the accident, yes.

Q. Did you take any further treatments there-after? A. No.

Q. Those were the last treatments you had?

A. That's right. He told me whenever it became painful it should be rubbed out, it should be massaged.

Q. Mr. Hennessey, did you have any cuts on your face? A. No, sir.

Q. Did you have any treatment for anything other than the shoulder or the neck?

A. That's all.

Q. As you were leaning over the wash basin at the time Mr. Livingston fell through the ceiling, were you pretty well leaned over? [41]

A. Just normal that it would require at my height to reach to that wash basin.

Q. Standing reasonably straight?

A. Approximately. I believe that wash basin would be about as high as that table (indicating), or a little higher.

Q. About that. If the testimony should show in this case that by actual measurement, the wash basin was 30 and $\frac{3}{4}$ inches from the floor, that would be about right? A. I imagine, yes.

Q. Near three feet then? A. That's right.

Q. What degree do you suppose or would you estimate that you might have been leaning over the wash basin, Mr. Hennessey?

A. Frankly, I don't know.

Q. You weren't leaning over 90 degrees?

(Testimony of Joseph P. Hennessey.)

A. No, and I would say probably 30 to 45 degrees.

Q. Between 30 and 45 degrees?

A. That's right.

Q. That is, at the time——

A. At the time of the impact.

Q. ——that Mr. Livingston hit you. Did you have the impression that Mr. Livingston's full weight fell on you, that he hit you squarely?

A. I did.

Q. You didn't have any impression that he brushed by you, or [42] that it was a glancing blow?

A. I would say it was definitely not a glancing blow.

Q. It was a square blow?

A. That's right.

Q. Which basin were you at? There are three basins in that men's room, aren't there?

A. I believe there are, yes.

Q. Which one were you standing at?

A. I am not sure, but I think it was the middle one.

Q. Maybe I can hand you a picture that will help you out. I have some photographs here.

A. I haven't seen the place since that day; I am not familiar with it.

Q. Do you think you might recognize a photo of it if we show it to you? A. I don't know.

Q. Well, I'll hand you, Mr. Hennessey, what has been identified as Defendant's Exhibit 4, and ask

(Testimony of Joseph P. Hennessey.)

you whether or not that appears to accurately portray what it purports to show?

A. I don't know.

Q. You don't know? A. That's right.

Q. Do you recall that there were three wash basins in that men's room? [43]

A. I believe that is right, yes, sir.

Q. You don't know which one of them you were standing at?

A. I think it was the middle one.

Q. Where was Mr. Wright standing?

A. He seemed to be to the right of me, I think, some place. Wherever that paper dispenser was on the wall, I think he was over there.

Q. The paper dispenser, I believe that would be at your left.

A. Then, it would be to the left of me then.

Q. If the evidence in this case should tend to show that the paper dispenser was to the left of the center wash basin rather than to the right, then would you say Mr. Wright was standing to your left?

A. No, I wouldn't, because I have an impression he was standing to my right.

Q. Well, directing your attention to Defendant's Proposed Exhibit 4, if the evidence should tend to show that that is an accurate photograph of the wash basins as they were located in that wash room on June 2nd, 1949, where would you place Mr. Wright in that exhibit? Would you just mark a

(Testimony of Joseph P. Hennessey.)

“W” where you would place Mr. Wright, or write the word “Wright”?

A. It all depends if I am placing myself right here.

Q. We want your memory of the matter.

A. If I were at the second basin, he would be somewhere in this vicinity, somewhere between here and this wall (indicating). [44]

Q. You put an “X” there?

A. I put an “X.”

Q. Just put the name “Wright” under it. Put a mark as to where you were standing as to your best recollection.

(Witness marks exhibit as directed.)

Q. When Mr. Livingston fell on you, Mr. Hennessey, did you have to straighten up to throw him off his back?

A. I don’t believe so, no; I believe he hit my back and fell onto the floor.

Q. He hit your back squarely and fell onto the floor? A. That’s right.

Q. You stated you were not thrown to the floor, but you indicated your legs wobbled and you almost went down? A. That’s right.

Q. Did you tell Mr. Wright or Mr. Livingston that that was the situation?

A. No; I believe the only thing I can recall telling either one of them was telling Mr. Wright that I had that catch in my shoulder as I lifted up

(Testimony of Joseph P. Hennessey.)

to brush myself off, and telling Mr. Livingston it was a good thing he wasn't a larger man.

Q. Did Mr. Livingston appear to be pretty well shaken up? A. I don't recall.

Q. Well, he went clear to the floor, didn't he?

A. That I just don't remember.

Q. It is a reasonably high ceiling? [45]

A. That's right, yes.

Q. I think the evidence in this case will tend to show it is a 12-foot ceiling.

A. That's right.

Q. You don't recall his condition?

A. No, sir.

Q. You recall saying it was a good thing he wasn't a heavier man. Was it treated seriously or with some levity? A. Lightly.

Q. As a matter of fact, you were laughing about it, you and Mr. Wright? A. That's right.

Q. Mr. Livingston didn't take it as lightly as you did?

A. That's right, he took the fall.

Q. You treated it as a joke?

A. I don't know about Mr. Wright; I treated it lightly, yes, sir.

Q. When you came out into the lobby, it was still treated with a good deal of laughter, somewhat of a joke, wasn't it? A. That's right.

Q. Just what part of your back did Mr. Livingston hit, just where did he strike you when he fell?

A. I would say in the small of the back. He seemed to come across me, as I remember the im-

(Testimony of Joseph P. Hennessey.)

pact, with most of his weight up in the shoulder or my neck, but with a glancing [46] blow along the small of my back.

Q. You think most of his weight——

A. Came up in here (indicating).

Q. Like as if I just drop my hand back of the car and right down on the shoulder, you think most of the weight was right about there?

A. That's right, like a little back of your clavicle.

Q. And then from there, he hit you in the small of the back? A. Yes.

Q. Did he push you forward?

A. My feet, I don't believe moved from where they were. I think I might have swayed forward, but so far as pushing my whole body forward, I would say no.

Q. You received no bruises on your face or head? A. No, sir.

Q. Did you strike any object with your face or head when he hit you with his heavy weight right on the shoulder? A. Not that I recall.

Q. You don't recall striking any object?

A. No, sir.

Q. You would recall it if you had?

A. I would think so, but I don't remember anything at this time.

Q. You do recall you consulted a doctor the next day with [47] reference to your shoulder?

A. That's right.

Q. You stated, I believe, Mr. Hennessey, on

(Testimony of Joseph P. Hennessey.)

direct examination that you noticed a catch in your right shoulder when you started to brush yourself off?

A. That's right.

Q. Which shoulder did you have that on?

A. The right shoulder.

Q. The right shoulder? A. That's right.

Q. That just occurred for a minute was it, and then gone?

A. Then it was a momentary catch, that's right, it stiffened up later.

Q. The brushing off was necessary because there was a lot of insulating material that had fallen, and dust and dirt that had come through the ceiling, is that right?

A. That's right.

Q. There weren't any falling objects that were very heavy?

A. Just the first one.

Q. That's right, just Mr. Livingston, he was the only heavy object that fell through that ceiling?

A. That's right.

The Court: We will suspend until two o'clock. Court will stand in recess until two o'clock. [48]

Cross-Examination

(Resumed)

By Mr. Angland:

Q. Mr. Hennessey, when we suspended, I believe we were [49] talking about the accident that occurred down at the airport in Pocatello. I think you stated that you had a catch in your shoulder that just lasted momentarily?

(Testimony of Joseph P. Hennessey.)

A. That's right.

Q. And that was the only pain or anything you suffered at that time? A. That's right.

Q. Mr. Hennessey, did your shoulder, did it become discolored, turn black and blue, anything like that? A. I don't believe it did, no.

Q. No outward appearance that anyone could notice? A. No, sir.

Q. Anything in the small of your back that could be observed upon examination?

A. I don't believe there was, no.

Q. Now going back some years, you testified on direct that you had had some hospitalization in Butte, Montana. When was that?

A. I think it was the winter of 1933.

Q. Do you remember what you were in the hospital for at that time?

A. I believe I was in the hospital for acute pneumonia.

Q. What hospital was that?

A. St. James hospital.

Q. In Butte? [50] A. Yes.

Q. Do you recall approximately how long you were in the hospital on that occasion?

A. As far as I can remember, it was two months.

Q. Were there any complications connected with that hospitalization?

A. There was. I developed acute nephritis.

Q. What is your understanding of acute nephritis?

(Testimony of Joseph P. Hennessey.)

A. It is some type of infection, I guess you would say, of the kidneys.

Q. Did they continue to hospitalize you for that condition after the pneumonia had cleared up?

A. They did, yes.

Q. For how long a period of time?

A. I don't know. I think the nephritis followed immediately on the pneumonia, and I think the period of time for both was two to three months.

Q. Now, in the year 1934, were you hospitalized anywhere?

A. I was trying to think whether or not this pneumonia—it was either late in 1933 or the first part of 1934, but that would be the only hospitalization I have had in either year. Whether it would carry over from one year to the other, I don't know for sure.

Q. Would it help you to examine the chart, your hospital chart from St. James Hospital, to fix the dates and the [51] periods of time in 1933 and 1934?

A. I imagine it would, yes.

Q. We have Miss Shea here from the St. James Hospital in Butte.

A. That's right.

Q. Have you had an opportunity to talk with her about them?

A. I talked to her for a minute, and she reminded me of a short stay I put in the hospital earlier in 1933 that I haven't testified to or described.

Q. What was the nature of that?

(Testimony of Joseph P. Hennessey.)

A. Evidently it was for a bellyache; I was in four or five days.

Q. You don't recall? A. No.

Q. Would you like to look over the chart to refresh your recollection as to how long you were hospitalized and for what condition?

A. Yes.

Q. I will hand you, Mr. Hennessey, the documents that Miss Shea has brought with her from St. James Hospital, and ask you——

The Court: You had better identify them and have them marked.

Mr. Angland: I had better ask the witness to step aside and have Miss Shea come [52] forward. * * *

Q. (By Mr. Angland): I will hand you, Mr. Hennessey, what has been identified as Defendant's Exhibit 5, and ask you to look, please, at that exhibit and see whether or not your memory is refreshed as to the hospitalization you had in the year 1933 in Butte, Montana, at the St. James Hospital. Have you completed your examination for the year 1933, Mr. Hennessey? I thought we might take it chronologically here.

A. I have it, yes, sir, go ahead.

Q. What do you find that the record shows as to hospitalization, medical care, you received at St. James Hospital in 1933, that is, with respect to what the ailment was?

A. It shows a pain in the abdomen, diarrhea and vomiting.

(Testimony of Joseph P. Hennessey.)

Q. And how long a period of time were you in the hospital on that occasion?

A. From August 28th to—July 28th to August 5th, I would say, 7 days.

Q. You didn't have nephritis at that time, is that right?

A. No, it says enteritis.

Q. Do you find any notation there to the effect that you had any nephritis at that time?

A. I do not.

Q. Now, as your memory serves you, do you think you had any nephritis in 1933?

A. I would say not, sir. [55]

Q. Well, by referring to the records, will you advise us of the next occasion on which you were hospitalized in St. James Hospital?

A. I would say April 20th, 1934.

Q. What was the ailment that you had at that time?

A. Pneumonia.

Q. Was there any complication?

A. Gastritis.

Q. Is there any entry in the record on that occasion to show you had any nephritis?

A. I would say, no.

Q. Now, Mr. Hennessey, when were you released from the hospital on that occasion?

A. June 19th, 1934.

Q. When was the next occasion?

A. June 25th, 1934.

Q. What was the condition then?

A. Acute nephritis.

(Testimony of Joseph P. Hennessey.)

Mr. Doecker: May I have that date again, please?

A. June 25th, 1934.

Q. On that occasion you were hospitalized for how long, Mr. Hennessey?

A. Well, let's see, I was hospitalized until October 20th, 1934.

Q. Mr. Hennessey—— [56]

A. That is four months.

Q. Yes. You recall that treatment, that period of time spent in the hospital quite well, don't you?

A. I can recall it, yes.

Q. What was the condition from the layman's point of view with respect to your abdomen?

A. It was swelled away up.

Q. Yes, as a matter of fact, you had scarring of the abdomen ever since?

A. That's correct.

Q. That is on the outside of the abdomen. You don't know whether there is any scarring on the inside or not?

A. No, I don't know.

Q. Have you ever had any surgery, Mr. Hennessey?

A. No, I have not.

Q. Were you released, did I understand you to say yesterday, from the hospital, as fully cured?

A. No, I didn't say that.

Q. Then, I misunderstood you.

A. No, I was not.

Q. You were not fully cured? A. No.

Q. You continued to suffer from nephritis after your release from the hospital on that occasion in

(Testimony of Joseph P. Hennessey.)

October, 1934? A. I did. [57]

Q. How long did you continue to suffer from the nephritis?

A. I took treatment for it in the year 1935, and as far as I know, I have no way of determining, I wasn't bothered with it, and had no medical examination, I wasn't bothered with it from, say the end of 1935 on, the beginning of 1936 on.

Q. You never had occasion to think nephritis had ever bother you from that time on?

A. No, I did not.

Q. You stated yesterday you were rejected from military service. Why, if you know, were you rejected?

A. Well, they told me it was because of the history of this acute nephritis. On several occasions I asked them.

Q. You didn't have any clinical examination, you stated on direct?

A. I did when I took these examinations for entrance into the service, yes.

Q. You did have examinations? A. Yes.

Q. Was it by reason of the history of the nephritis, or by reason of the continuing condition?

A. I don't know. What they told me was it was because of the history. I did not see the clinical findings.

Q. Of course, you would be interested in seeing their findings, wouldn't you, Mr. Hennessey?

A. If they would let me see them, yes. [58]

(Testimony of Joseph P. Hennessey.)

Q. Suppose we make available to you, then, the Selective Service record, Mr. Hennessey? I wonder if I might ask the witness to step aside?

The Court: It is not necessary. Mark it and show it to him and get it identified later.

Q. I will hand you, Mr. Hennessey, what has been identified as Defendant's Proposed Exhibit 6——

Mr. Doepker: Your Honor, we object to any evidence in connection with this matter until counsel has had an opportunity to examine it.

Mr. Angland: I am going to hand it to you in just a minute.

The Court: There is no necessity for that. The witness is the one asked to identify it and if he knows what it is.

A. It appears to be a record of Local Draft Board Number 2.

Q. Where?

A. Silver Bow County, Montana.

Q. Is that the Local Board with which you were registered?

A. That's right.

Q. Do you want to look at the documents contained in that folder, Mr. Hennessey, to see whether or not they contain your signature and are in fact the documents with respect to your registration with Local Board Number 2 at Butte, Montana? Does that appear, Mr. Hennessey, to be your record all right?

A. I see my signature in here twice, yes. [59]

Mr. Angland: I might state to the Court and

(Testimony of Joseph P. Hennessey.)

counsel, I don't think it will be necessary to offer the whole record. There is a portion of that exhibit we may offer. It may be necessary to offer it all.

The Court: Unless counsel stipulate, you can't offer it at this time anyway, so let's go on to something else.

Mr. Angland: Very well, let me have the record. Mark this 6-A, a portion of this record. Mr. Hennessey, I will hand you what has been identified as Defendant's Exhibit 6-A, and ask you in whose handwriting that document appears to be?

A. It appears to be mine.

Q. Mr. Hennessey, that is a letter you directed to the Selective Service Board, is it?

A. It is my handwriting.

The Court: Is that a letter you directed to the Selective Service Board?

A. It is a letter to Mr. Briney; I believe he was chairman of the Board at that time, Judge.

Q. It is a letter you directed to the Selective Service Board? A. That's right.

Q. It has to do with your physical condition, doesn't it? A. It does.

Q. Mr. Hennessey, did you send that to the Selective Service Board to assist them in their classification of you under the [60] Selective Service Act?

A. It must have been the reason, yes; I don't recall right now the circumstances around it, but it was sent to them.

Q. Do you know when that letter was sent to

(Testimony of Joseph P. Hennessey.)

the Board? A. There is no date on it.

Q. Well, the Selective Service Act, I believe, was passed in 1940?

A. I believe that's right, yes.

Q. For your information, that letter was attached to a card of the Board dated August 5th, 1941, the next to that letter dated August 28th, 1941. That letter appears to be between those two documents.

A. It would be about that time.

Q. It would be in August of 1941, then?

A. Yes.

Q. After reading that letter, Mr. Hennessey, do you still state to the Court that you did not have nephritis following late 1935 or early 1936?

A. I would say that, according to this letter, that, according to Dr. Childs, who was examiner for the Navy in Seattle, that I had it.

Q. Yes. With respect to your ability to do work, according to the information you received at that time, what was the situation?

A. That I shouldn't do any heavy work. [61]

Q. Then you did have nephritis as late at August, 1941, according to medical advice you received? A. It seems so, yes.

Q. You wish then to change your answer as to not having any nephritis?

A. That's right, yes.

Q. Now, Mr. Hennessey, have you had any medical advice concerning your nephritis since the date you wrote that letter in 1941?

(Testimony of Joseph P. Hennessey.)

A. I have had additional physicals since the date I wrote that letter.

Q. What has been the best medical advice you have received concerning that condition?

A. Well, the recent ones, it doesn't show; I guess once in a while there is a slight show of albumin, but that is the only indication I ever had; for a number of years, I never had any. I would say that probably the best I could say, between, oh, sometime around that period of time up until maybe today, that I probably didn't have it, or sometime after that, I didn't have it.

Q. What is the medical information you have received on that?

A. Up until recently, I hadn't received any medical information for a long time on it.

Q. Up until recently. Are you beginning as of the date of [62] August, 1941, now, until recently?

A. I believe there was additional—I am not sure now, but I think that since then there was an additional military physical examination there, probably in the same year.

Q. Do you wish to look at the Selective Service file to see?

A. If I may; I can't recall now whether there was or not.

Q. Yes, you may.

A. I believe there should be an examination from that Board in Missoula after I had passed in Butte and went to Missoula.

Q. I might call your attention, this Defendant's

(Testimony of Joseph P. Hennessey.)

Exhibit 6-A, or proposed Exhibit 6-A refers to an examination.

A. What I had in mind was after that, I was drafted and I passed in Butte and went to Missoula and to Fort Lewis. I went from Butte to Missoula, and then in Missoula I was re-examined and sent back from there. That is the one I had in mind, but I don't believe it is in here.

Q. You don't think it is here?

A. I don't see it. Anyway, there was one after that.

Q. In any event, you were constantly rejected for military service?

A. That is correct.

Q. That was by reason of your physical condition?

A. That's correct.

Q. You don't recall any medical attention you have received [63] for the nephritis since 1941, since August, 1941?

A. I have taken no treatment for it since 1936.

Q. On how many occasions since August, 1941, if any that you can recall, have doctors advised you of that condition?

A. I don't believe since that last examination that I just referred to that any doctor has advised me of that condition. Right off hand I can't think of any.

Q. Referring to the St. James Hospital record again, after you were released from the hospital on October 20th, 1934, when were you next hospitalized?

A. On April 12th, 1939.

(Testimony of Joseph P. Hennessey.)

Q. What was the reason for the hospitalization on that occasion?

A. (Reading): "The patient was struck in the eye with a handball."

Q. Yes, you were engaged in some sporting activity at that time? A. That's right.

Q. Mr. Hennessey, I think you said that you were not ill from then on on your direct examination, if I recall it correctly, until 1949, I believe, is that right, or was it 1947?

A. I think I stated I got hurt in 1947, didn't it?

Q. Yes, you did, 1947, that's right. You rolled over an automobile in 1947, is that right? [64]

A. That's right, yes.

Q. Who was your doctor on that occasion?

A. Dr. Harry Soltero.

Q. Here in Billings? A. That's right.

Q. What was your condition as a result of the automobile rolling over?

A. I had this stiff shoulder; I couldn't lift it, difficulty in lifting it, pain in the shoulder.

Q. Is that all? A. That's all.

Q. Were you hospitalized for that?

A. No, I was not.

Q. For how long a period of time were you treated?

A. It was just a very short period of time, just two or three treatments, I believe.

Q. Very similar then to the treatment you received in 1949 following the accident at Pocatello?

(Testimony of Joseph P. Hennessey.)

A. The same treatment?

Q. The same treatment? A. Yes.

Q. For about the same length of time?

A. For about the same length of time.

Q. And the shoulder appeared to recover?

A. After about six months or so, it seemed to recover, yes. [65]

Q. In 1947, as a result of that automobile accident?

A. As a result of the automobile accident, yes.

Q. Did you injure your abdomen in any way at that time? A. I had no complaints, no.

Q. Did you injure your lower limbs?

A. No.

Q. You didn't get bruised up?

A. I got some bruises, yes; I don't remember just where they were now.

Q. Can you tell us about some of those bruises, Mr. Hennessey?

A. As I say, the only thing I received treatment for was that shoulder, and that is all I can remember. I must have had some bruises.

Q. But you don't recall where they were?

A. No, I don't.

Q. Any internal injuries of any kind?

A. None that were determined.

Q. Outside of the soreness?

A. That's right.

Q. Your body was pretty well sore all over as a result of the automobile accident?

A. I was limping, yes.

(Testimony of Joseph P. Hennessey.)

Q. You were limping? A. Yes.

Q. Which leg? [66]

A. I bruised this hip up here (indicating), I think, the right one.

Q. The right hip? A. Yes.

Q. Which shoulder? A. Right shoulder.

Q. That is the same one Mr. Livingston struck?

A. That's right, the same one he fell on.

Q. For how long did you continue to limp?

A. I think I continued to limp the day after I got back, just the first day, it was kind of stiff.

Q. You didn't receive any treatment for the injuries to your hip? A. None.

Q. Well, that is in 1947. Then, in 1948, you were in an air line accident, is that right?

A. That's right.

Q. And no injuries whatever?

A. Didn't complain of any.

Q. Of course, I am not interested in whether you complained or not, I am interested in whether or not you had any.

A. So far as I know, I had none.

Q. You didn't do any limping as a result of that accident? A. I did not.

Q. No injuries whatever? [67]

A. I didn't even have a bruise.

Q. It was unnecessary to consult a doctor over that accident?

A. I didn't consult one; I didn't think it was necessary.

(Testimony of Joseph P. Hennessey.)

Q. Now, in 1948, were you hospitalized at all in Billings, Montana?

A. I was hospitalized, oh, I would say a month or six weeks prior to this; it was in the fall of 1948, for acute laryngitis.

Q. Any complications at all on that?

A. I don't think so, no.

Q. In 1949, were you hospitalized here in Billings? A. I was, yes.

Q. Now, I want you to know when I am asking you about hospitalization, Mr. Hennessey, we have the hospital records from St. Vincents.

A. I want you to know all of them, too.

Q. I don't want you to give any mistaken answers. You are aware of your right to have the exhibits? A. That's right, yes.

Q. What hospitalization, if any, did you receive in 1949?

A. Maybe I got the dates mixed up, 1947 and 1948—I wasn't in the hospital in 1948 at all. In the fall of 1949 was this—the fall of 1949 that I had this acute attack of laryngitis, and in the spring of 1950 that I went into the hospital and later developed this. [68]

Q. You didn't have any hospitalization, then, here in Billings in 1947, 1948 and 1949, save for the laryngitis in late 1949, is that right?

A. I didn't have any anywhere; that was it.

Q. What was that?

A. I didn't have any anywhere; that was it.

(Testimony of Joseph P. Hennessey.)

Q. That was it? A. Yes.

Q. And then the next occasion on which you were hospitalized is when you went into the hospital on January 3rd, 1950? A. That's right.

Q. The hospitalization at that time was for what?

A. Well, a recurrence of this laryngitis.

Q. I think possibly the hospital record shows more than that on it, Mr. Hennessey, if you would like to refer to this record.

A. Which one? This big one?

Q. Yes.

The Court: What exhibit is that?

Q. Defendant's Exhibit Number 2, if you will refer to that exhibit. A. Go ahead.

Q. Wasn't there a respiratory infection in addition to the laryngitis when you were admitted to the hospital in January 3rd, 1950?

A. Bronchopneumonia.

Q. It wasn't laryngitis then, it was pneumonia?

A. That's right.

Q. And you were sufficiently recovered on January 7th that the doctor was going to release you?

A. That was right.

Q. And that was the occasion on which you developed this blood clot? A. That's right.

Q. You remained then in the hospital for treatment until April, was it?

A. March, wasn't it?

Q. I forget.

A. I think it was March; I think it was March 12th.

(Testimony of Joseph P. Hennessey.)

Q. March 12th you were released?

A. Yes.

Q. Have you been hospitalized since that time, Mr. Hennessey?

A. I have.

Q. What is the next occasion on which you were hospitalized?

Mr. Doepker: I believe this is improper cross-examination, your Honor. We object to it on that account. Anything that occurs since the hospitalization in 1950 would not be material unless there was some pleading on the part of the defendant alleging that his condition of disability resulted from something other than the condition that developed in January, 1950, and the hospitalization that occurred at that time. [70]

Mr. Angland: May I be heard for just a minute, your Honor? I am unable to understand counsel in that regard. Counsel, on his direct examination, went into the witness' present condition; he has brought him right up to date. I think if we are going to show his condition as of this date for consideration by the Court that the Court is entitled to know of any conditions that have developed between the date of that hospitalization and the present time.

The Court: Obviously. I never heard of anything—do you have any authority for your position, Mr. Doepker?

Mr. Doepker: For the position it is necessary to plead?

The Court: To plead, yes. Doesn't a general

(Testimony of Joseph P. Hennessey.)

denial—under a general denial can't he show what his condition is and what it resulted from?

Mr. Doepker: I don't think so, your Honor, on anything subsequent.

The Court: Do you have any authority for that position?

Mr. Angland: It would amount to shutting cross-examination off.

The Court: You would never be able to inquire as to what his present condition is, in any event, and we would not be able to fix damages if you couldn't find what his present condition is, and that it results from the condition you allege it results from.

Mr. Doepker: That is true, your Honor. My position is [71] if there is anything that has affected his condition subsequent to 1950, something that happened subsequent to 1950, if it is the contention of the defendant that something happened subsequently that is responsible for his present condition, it should have been pleaded.

The Court: I don't understand it that way. Do you have any authority for that? In any event, I will reserve ruling so your point can be taken care of, and you can give me authorities later. Proceed with the examination.

Q. Do you recall the question, Mr. Hennessey?

A. Read the question, please, Mr. Reporter.

(Question read back by Reporter as follows:

“What is the next occasion on which you were hospitalized?”)

(Testimony of Joseph P. Hennessey.)

Q. You may have the hospital records.

A. Yes. Looking at the two hospital records, the Deaconess and St. Vincent's, Defendant's Proposed Exhibits Number 2, I believe, is one, 1 and 2, aren't they?

Q. Defendant's Proposed Exhibits Numbers 1 and 2, yes.

A. You have already covered this 11-29-49, haven't you, this acute laryngitis?

Q. That was acute laryngitis. I think you told us about that, yes. You were hospitalized on that occasion at the Deaconess Hospital, is that right?

A. That's right. I believe the next one would be on November 14th, 1950. [72]

Q. November 14th, 1950? A. Yes.

Q. Then, you were not hospitalized between the latter part of March, 1950, and November, 1950?

A. No, sir.

Q. What was the reason for your hospitalization in November, 1950?

Mr. Doepker: Just a minute now, your Honor, we desire to renew our objection, and call your Honor's attention—we have furnished your Honor with a trial brief?

The Court: Yes.

Mr. Doepker: I call your Honor's attention to page 10, starting in the middle of the page with "Pleading Affirmative Defenses," and Barron and Holtzoff's Federal Practice and Procedure, Section 279, at page 499.

(Testimony of Joseph P. Hennessey.)

Mr. Angland: Your Honor——

The Court: I will reserve ruling.

Mr. Angland: ——this is shutting off cross-examination on the direct.

The Court: Proceed, I will reserve ruling. Answer the question.

A. Alcoholic poisoning.

Q. Mr. Hennessey, how long were you hospitalized on that occasion? A. Seven days. [73]

Q. Mr. Hennessey, did you experience any falls that you recall prior to your hospitalization on that occasion, or during your hospitalization?

A. Right offhand, I can't think of any, no.

Q. You don't recall any bruising or anything of that kind that you received?

A. I think at the time—I don't know, I might have; I could very easily have slipped and had bruises from walking on those crutches. Whether I did or not—I was on crutches all that time—I just don't know. There might be something in there that would show it; I can't find it.

Q. On that occasion, Mr. Hennessey, you were in the Deaconess Hospital at Billings, Montana, is that right? A. That's right.

Mr. Doepker: Deaconess?

A. Deaconess, yes, sir—no, this is St. Vincent's.

Q. That is St. Vincent's?

A. St. Vincent's, yes.

Q. Mr. Hennessey, were you hospitalized again in 1950 after your release on that occasion at either hospital? A. No, sir.

(Testimony of Joseph P. Hennessey.)

Q. Were you hospitalized in 1951?

Mr. Doepker: Just a minute, your Honor, we just want to save the record.

The Court: You can save your objection to this, and I will [74] reserve ruling on it; answer the question.

A. I was, yes.

Q. When were you hospitalized in 1951?

A. September 7th, 1951.

Q. What were you hospitalized for on that occasion?

A. Cerebral concussion.

Q. Do you recall what caused the cerebral concussion in September, 1951, Mr. Hennessey?

A. Yes, I had been hit with an object in the front of my head.

Q. Where did this accident occur?

A. At my office.

Mr. Hennessey: Just a minute, to which we object. The witness has testified to the fact he was hit in the head, and it is immaterial why, how, or where the accident occurred.

The Court: It might be immaterial why, but how is a different matter. We will have to find out what kind of a blow it was, what treatment he received for it, what effect it has upon his condition. You don't have to inquire why he was hit.

Q. However, I want to know what he was hit with. What object were you hit with?

A. I was hit with a telephone.

Q. The blow was sufficient that you——

A. I had a concussion.

(Testimony of Joseph P. Hennessey.)

Q. Who was your doctor on that occasion? [75]

A. R. S. Stokoe.

Q. Was Dr. Stokoe your doctor on all these other occasions? A. He was, yes, sir.

Q. For how long a period of time were you hospitalized on that occasion?

A. Three weeks.

Q. Were there any other complications on that occasion?

A. That is all that show on this chart; that is all there were.

(Ten-minute recess.)

Q. Well, what was the last hospitalization you were testifying about, Mr. Hennessey?

A. That was the one—it was concussion in October, ended the first day of October, 1951.

Q. Did you continue to receive medical treatment for that condition after your release from the hospital?

A. I believe I took the next month off and that was all.

Q. You took the next month off by reason of the concussion? A. That's right.

Q. Have you had any other hospitalization since that time? A. I have not.

Q. Have you received medical treatment since that time for any condition other than the leg that has bothered you by reason of the blood clot?

A. No, I haven't. [76]

Q. Did you, other than the hospitalization, re-

(Testimony of Joseph P. Hennessey.)

ceive medical treatment for any condition other than the condition which occurred on January 7th, 1950?

A. You mean anything other than the concussion?

Q. Excluding the hospitalization you have received, have you received medical attention for any other condition during the period of time from your release from the hospital the latter part of March, 1950, until the present time?

A. I don't believe so, no.

Q. You haven't had occasion to consult with any doctor?

A. No, sir.

Mr. Angland: That is all.

Redirect Examination

By Mr. Doepker:

Q. Were you examined by Dr. Allard?

A. I was, yes.

Q. Were you examined by any other doctors?

A. No, sir—oh, yes, I was by Dr. Horst in Butte.

The Court: That is with reference to preparation for trial of this action, those examinations?

Mr. Doepker: That's right.

Mr. Angland: That isn't treatment otherwise?

A. No.

Mr. Angland: I might ask one question on that: When was [77] he examined by Dr. Horst?

A. I was examined by Dr. Horst—I had two examinations by Dr. Horst. I had one last Satur-

(Testimony of Joseph P. Hennessey.)

day, and I had one on the 26th of December, I believe it was.

The Court: That was last December?

A. Last December, yes, sir.

Mr. Doepker: Your Honor, I have doctors waiting here, and there is just a few matters I want to take up with him. Could I take those up after I use the doctors? They have been waiting here since yesterday morning.

The Court: It is agreeable with me. Do you have any objection?

Mr. Angland: I have no objection.

The Court: Very well, we would like to accommodate the doctors if we can.

Mr. Angland: I see no objection, as counsel stated yesterday, so long as he don't go into matters with this witness that might be matters we want to go into with the doctors. That is the only restriction I suggest at all.

The Court: Very well.

(Witness temporarily excused.) [78]

JOSEPH P. HENNESSEY

plaintiff, recalled as a witness in his own behalf, having previously been sworn, testified as follows.

Direct Examination

By Mr. Doepker:

Q. You are the same Joseph P. Hennessey who has previously testified in this case?

A. I am, sir.

(Testimony of Joseph P. Hennessey.)

Q. Prior to the year 1949—I should say prior to the year 1950, what was your business or occupation here in Billings?

A. I was practicing as an attorney here in Billings.

Q. What was the nature of your practice?

A. It consisted mostly of court work and general trial practice.

Q. In following your profession in Billings, what was your experience with regard to your volume of business prior to the year 1950? [377]

A. Well, in the years prior to that, it had been gradually increasing.

Q. And in the year 1950, what was generally the difference between the time that you could apply to your business compared to previous years?

A. In the year 1950, I wouldn't say I devoted over 20 per cent, any time, to my business in comparison to other years.

Q. In doing your work as an attorney, what was it necessary for you to do in connection with preparation of your cases?

A. I had to do all my own investigative work, my outside contact with witnesses, and gathering evidence, my appearances in court; all that work was done by myself.

Q. Were you, during the year 1950, able to attend or get into the court rooms at all?

A. No, sir, I was not.

Q. When did you next start to be able to get

(Testimony of Joseph P. Hennessey.)

into the court rooms in Billings here subsequent to this episode at the Deaconess Hospital?

A. I tried it the first of 1951 and found out I couldn't do it, and I don't believe I really returned to practice until the first part of 1952.

Q. During the time that you were practicing in Billings prior to the year 1950, what was your net earnings, approximately?

A. Oh, in the neighborhood of \$5,000.

Q. What was your experience in the year [378] 1950?

A. The year 1950, I made about \$4,600.

Q. And did you have any hold over business?

A. That was practically all hold over business.

Q. What was your experience in the year 1951?

A. I made \$2,000.

Q. What has been your experience after you resumed practice in 1952?

A. It has gone up, it started to increase again to about \$3,500.

Q. Now, Mr. Hennessey, just briefly relate what was the reason that you could not attend and practice in court during the time that we have been talking about, 1950 and 1951?

A. Well, all of the year 1950, after getting out of the hospital, I was on crutches, and I had no tolerance in my left leg, so my movement, even on the crutches, was extremely limited, and I was required to take long periods of rest when I couldn't go anywhere at all, even in the latter part of that

(Testimony of Joseph P. Hennessey.)

year. As a result, I couldn't go out and investigate a case; I couldn't even go near the courthouse.

Q. At the present time are you able to use this left leg? A. Very limited.

Q. I was going to finish my question—in order to do the ordinary walking around?

A. No, sir.

Q. How much of a walk do you usually stand on this left leg? [379]

A. Well, the maximum, two to two and a half blocks.

Q. And from the standpoint of arriving at any expense of any kind, or anything of that sort, what methods have you used to get to places you want to go in your business?

A. If I go from my office to the courthouse on any given day, I take a taxicab; when I leave the courthouse, I take a taxicab back to my office.

Q. Is that also true with the investigation of any case in which you have to interview witnesses?

A. If I go to interview witnesses, I take a taxicab or have someone drive me out. I return by cab, or if the witness will take me back, I have him drive me back.

Q. There has been some evidence here concerning your partaking of alcoholic liquor. Explain to the Court what that consisted of during the period of the year 1949?

A. I would say subsequent to the year 1949, that as a whole I drank moderately.

(Testimony of Joseph P. Hennessey.)

Q. And after this incident at the Deaconess Hospital, what was the circumstances?

A. There were periods when I drank excessively.

Q. For what reason, if you had any; if not, why, we will let the fact stand?

A. Because of the pain in the leg. It was either a case of drinking something to kill the pain or take a lot of dope, so I drank a lot of whiskey. [380]

Q. To what extent has that pain subsided at the present time?

A. I still have the pain at the present time. It is not as severe as it was during those two years.

Q. After you left the Deaconess Hospital, Mr. Hennessey, where did you first go?

A. On leaving the Deaconess Hospital, I went to the Northern Hotel.

Q. During that period of time did you maintain a home here in Billings? A. I did.

Q. Why didn't you use your home?

A. It was necessary upon leaving the hospital to have a place that had elevator service in it and had a telephone, and where people could be immediately available in case something went wrong.

Q. How long did you use this Northern Hotel as a convalescent hospital?

A. From that day I left the hospital, the balance of the month of March, all that month of April, I believe, to the 11th of May.

Q. That room alone, what did that cost you?

A. Four dollars a day.

Q. What is your present age?

(Testimony of Joseph P. Hennessey.)

A. 36, the 17th of January.

Q. I believe you testified that you also, as part of your [381] treatment of this leg, took some physiotherapy at the Billings Clinic. Did you testify to that?

A. I did; I took physiotherapy and hydrotherapy, both, at the Billings Clinic.

Q. Did you pay them the going price, the rates they were asking, for those services here in Billings?

A. I did.

Q. What did that cost you?

A. My total for service rendered by them after leaving the hospital was \$136.

Q. As part of your cross-examination, you were referred to a record in the District Court of the Second Judicial District of the State of Montana, attention being called to a complaint in that case. I am speaking of the case in the Second Judicial District. Will you explain to the Court how that case was prepared?

A. I had discussed the case with you as the attorney, and about the time this case was filed, I had called you and told you my shoulder hadn't gotten any better and my back was bothering me a little, and told you to go ahead and file it.

Q. Were you present when the complaint was filed, or prepared by me in your absence?

A. It was prepared by you in my absence.

Q. You were in Billings, and I was in Butte?

A. That is correct. [382]

(Testimony of Joseph P. Hennessey.)

Q. Do you know how it came about that this case was dismissed, how it came about?

A. I believe it was discovered in the course of additional investigation that the workman involved, in place of working for the Air Lines, was an employee of the Government.

Q. The case was then dismissed without prejudice?

A. That's right.

Mr. Doepker: That is all.

Mr. Angland: No cross-examination.

(Witness excused.)

The Court: Call the next witness.

Mr. Doepker: Your Honor, we offer the American Experience Table of Mortality. Your Honor, I believe, will take judicial notice of that. The life expectancy of a man 36 years—is that your age—36 years of age, he has a life expectancy, according to the American Experience of Mortality, of 31.07 years.

Mr. Angland: I have no objection to that, your Honor.

The Court: Very well. [383]

HARRY R. SOLTERO

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows: [78]

Direct Examination

By Mr. Doepker:

Q. Will you please state your name?

A. Harry R. Soltero.

Q. What is your business, occupation, or profession? A. Physician and surgeon.

Q. Are you duly licensed to practice your profession in the State of Montana? A. Yes.

Q. Are you practicing your profession in the State of Montana at the present time?

A. Yes.

Q. Have you been practicing in the City of Billings for some time? A. Yes.

Q. For how many years have you been practicing in Billings? A. Since 1946.

Q. You are a graduate of what school of medicine?

A. Marquette University School of Medicine.

Q. What year did you graduate? A. 1943.

Q. After that, did you take an internship?

A. Yes, St. Agnes Hospital, Fond du Lac, Wisconsin.

Mr. Angland: As I stated, I will admit the doctor's qualifications. [79]

The Court: He may be qualifying him specially.

Mr. Doepker: I don't think there is anything

(Testimony of Harry R. Soltero.)

further necessary if they admit his qualifications as a physician and surgeon.

The Court: Very well.

Q. Doctor, did you have occasion to have as a patient one Joseph P. Hennessey during the time you have been practicing in Billings?

A. Yes.

Q. During the year 1947 did he ask your advice or treatment in connection with something?

A. Yes.

Q. What was that?

A. He came into my office complaining of pain in his right shoulder and stated he had been in an automobile accident, and he thought he might have done some serious injury to his shoulder. Upon examination at that time, it showed considerable tenderness over the shoulder area; he was unable to raise his right arm above the normal limits of motion because of pain, and at that time I fluoroscoped him. In the fluoroscope, I was looking for a possible dislocation or fracture and was unable to find one, and my diagnosis at that time was a supraclavicular neuritis, a secondary injury previously, at this time, and I treated him with some heat under the form of diathermy, which seemed to relieve him considerably. [80]

Q. He was treated for what period of time in 1947, Doctor?

A. Well, it was improving when I discharged him, and I told him at the time that I thought he would probably have trouble for a possible six

(Testimony of Harry R. Soltero.)

months' period, I wasn't sure, but if he had any more trouble to let me know.

Q. That was the extent of the treatment then in 1947? A. Yes, that's right.

Q. You have, during this period of time, you have seen Mr. Hennessey, visited along with him in Billings, have you?

A. Yes, I have seen him after that.

Q. So far as you know, Doctor, did he appear to recover from that condition you have related?

A. Yes, he didn't complain any more of it.

Q. Subsequently, did you again have occasion to treat Mr. Hennessey in the year 1949?

A. Yes, sir; he came into my office stating that he had been in an airport, and that someone had fallen through a roof on him, or a ceiling.

Q. And at that time, Doctor, with that history, what did you discover? Did you make a physical examination of him?

A. His chief complaint at that time was again—I examined him—pain in his right shoulder, and I re-examined the shoulder to see if he had possibly broken it at that time, or dislocated it, and I didn't locate any fractures or dislocations, and I made the same diagnosis as an aggravated [81] condition, since I knew that he had previously this neuritis before.

Q. And on this second occasion, did you find any nerve damage?

A. Yes, the same nerve, I diagnosed the same

(Testimony of Harry R. Soltero.)

condition, supraclavicular neuritis on the right side.

Q. Did you treat him then at that time for that condition?

A. Yes, we put him under the same form of treatment, giving him some heat, and under the same stipulation that if it got any worse, we would have to continue one, but it seemed to improve and get better.

Q. The condition did improve, did it?

A. Yes. He sometimes would have some pain, and it didn't get any worse, and I saw no need for further treatment.

Q. What have you to say as to this condition of the shoulder at the present time, or the last opportunity you had to examine him, if you will relate when that was?

A. I believe that last time I examined that shoulder would be some time in 1949 shortly after that, and he used to say he still had some pain in his shoulder, but nothing unusual.

Q. At that time you found no fractures or dislocations, is that right?

A. That's right.

Q. And then are you also a member of the Soltero Clinic with Dr. Stokoe?

A. Yes. [82]

Q. You knew that Dr. Stokoe was treating him later then in that fall, 1949, did you not?

A. Yes, I knew he had him in the hospital.

Q. That he had been in the hospital?

A. Yes, that he had been in the hospital.

Q. With regard to your knowledge of Mr. Hen-

(Testimony of Harry R. Soltero.)

nessey in the period during 1947, 1948 and 1949, did you, in your treatment of him, observe anything wrong in the way of his general health, except these two times you have indicated when he had damage to his shoulder?

A. No; his general health seemed good, and I do recall that on one occasion I had been kidding him about scars on his abdomen, and he said that he had had this nephritis years ago, but I did not examine him for that.

Q. You didn't make any examination for it?

A. No; he just told me about it and I just ignored it.

Q. He didn't make any complaints about it?

A. No.

Q. Your clinic has been his family physician, has it not, during the time he has been here in Billings, to your knowledge?

A. To my knowledge, that's right.

Q. Do you know of any complaints during the years 1947, 1948 and 1949, other than what you have alluded to, from your own attention to Mr. Hennessey?

A. No, none brought to my attention. [83]

Mr. Doecker: You may inquire.

(Testimony of Harry R. Soltero.)

Cross-Examination

By Mr. Angland:

Q. Dr. Soltero, I think possibly counsel mis-spoke. He said you knew of Dr. Stokoe's treatment of the shoulder in the fall of 1949. Your response was that you knew he was hospitalized in the fall of 1949.

A. I didn't mean particularly when he was hospitalized and so forth. I don't recall the dates he was hospitalized, but at times Dr. Stokoe said he had Mr. Hennessey in the hospital, or that he was treating him. I didn't pay much attention to it.

Q. Do you know what he was in the hospital for in the fall of 1949?

A. If I could see the chart.

The Court: What difference does it make?

Mr. Angland: I thought being a member of the clinic he might have made some records or treated him.

A. No, he was Dr. Stokoe's patient.

Q. Then, in the fall of 1949, when he was in there for laryngitis, you didn't know about that at all?

A. I don't remember nothing specifically. We commonly do that between us, say we have so and so in the hospital, and unless we are specifically called in, we don't consult with [84] each other.

Q. Mr. Doepker asked you about having seen Mr. Hennessey around and visited around with him

(Testimony of Harry R. Soltero.)

from time to time since you treated him in 1947 as a result of the injury to the right shoulder. You further stated that his general health has been good, Doctor?

A. At that time.

Q. At that time. Now, which particular time do you mean?

A. Well, what I meant, although he specifically had trouble with his shoulder, his general medical condition was good at the time I first examined him. In other words, he wasn't what we considered ill; he was able to walk; he was able to get around.

The Court: Is that all you mean by having good health is that a person is able to walk around? In other words, you didn't examine him to determine what his real health was; he just appeared to be good?

A. He just appeared to be good.

The Court: He appeared to you the same as anybody else. This is not a medical opinion you are giving as to the state of his health?

A. Of course you do a general examination——

The Court: Did you give him a general examination?

A. Yes, the heart, lungs, and so forth, at the time of——

The Court: Tell us what your examinations were and what they [85] showed?

Q. (By Mr. Angland): When was that you gave him the general examination?

A. When he was in the hospital—at the time, of

(Testimony of Harry R. Soltero.)

course, I gave him the examination under the fluoroscope.

The Court: Was he in the hospital at any time with the shoulder complaints? That is all you testified to.

A. No.

The Court: You did attend him otherwise than in the hospital?

A. Yes.

The Court: Then, you didn't make any examinations?

A. It depends upon what you call an examination, Judge.

The Court: I want to find out what you call an examination.

A. I can look at a man and examine him. I have that ability as a doctor, just to look at him and examine him, look at him and examine him with my eyes.

The Court: That is the kind of an examination you gave him?

A. I examined his shoulder; I obviously examined his heart and lungs under the fluoroscope. We call that a general examination from what we call visual. Then there is examinations from actually putting your hands on him and examining him, also from a physical examination standpoint. I didn't go into a lot of detail.

Q. (By Mr. Angland): In other words, Doctor, not going into a lot of detail, you were restricting

(Testimony of Harry R. Soltero.)

pretty much your [86] examination to the shoulder condition, isn't that what it amounts to?

A. That's right, that was the primary examination.

Q. You were concerned about the soreness in the right shoulder? A. That's right.

Q. You didn't go over the rest of the abdomen or body to see whether there was anything wrong with him, is that right? A. No, I didn't.

Q. If he was suffering from an internal ailment of some kind, he didn't complain to you about it, and you didn't explore that possibility?

A. That's right, he didn't complain of anything at the time.

Q. That is what I mean, Doctor. You gave him some therapy treatments, I believe you said, for the right shoulder and told him it might bother him for a period of six months, is that right?

A. That I thought it might, yes, sir.

The Court: That was in 1947?

A. 1947 and also in 1949.

Q. And in 1949? A. Yes.

Q. Did you treat the shoulder in 1949?

A. Yes, I gave him some more diathermy treatments.

Q. You gave him some diathermy treatments in 1949. Do you know when that was, now, in [87] 1949?

A. It was in the summer, but for certain I don't recall the exact month; it might have been around June, I believe.

(Testimony of Harry R. Soltero.)

Q. It might have been. Could you tell from checking your records, Doctor?

A. No, I don't particularly have any records on Joe's case because Joe used to come in and talk to me on other matters at that time, and I don't have any physical examination record, or haven't been able to find it.

Q. He came in to talk to you about other matters?

A. From time to time. He was in from time to time at other times.

Q. Well, now, as you have known him, you have stated on direct, seen him around town, visited with him from time to time, did he follow your instructions as to the care he should give himself following your treatment of him in 1949?

A. I don't know.

Q. Well, to the best of your knowledge, from your observation of him, and what you saw of him, Doctor, did he follow your instructions?

A. During the time I specifically saw him, for the first few days, he followed my instructions. From then on, I don't know.

Q. Did you see him around and visit with him from time to time thereafter?

A. I may have, I don't remember. [88]

Q. Did he appear to be following your instructions?

A. He didn't complain any more of his shoulder, I know that.

Q. Doctor, sometimes we get into an embar-

(Testimony of Harry R. Soltero.)

passing position. I am not trying to embarrass you. It is necessary to just give the Court the fact, that is what I am trying to get at. You did visit with him from time to time, you did see him about Billings, didn't you?

A. You are trying to stipulate that in a certain period of time that I don't remember.

Q. Following your treatment of him in 1949.

A. In 1949, that's right.

Q. You gave him some diathermy treatments. After you gave him those treatments, Doctor, did you observe him visiting in your office or in and about Billings on different occasions?

A. I don't recall about the times I saw him. I do specifically remember seeing him once in the hospital with Dr. Stokoe after that.

Q. Is that the only time you saw Mr. Hennessey between the time you quit treating him from the shoulder in 1949, the next time you saw him in the hospital with Dr. Stokoe, when Dr. Stokoe had him as a patient, is that the situation?

A. I probably saw him; I don't remember specific times.

Q. There is a period of time—the evidence in this case tends to show that he received the injury in Pocatello on June 2nd, 1949, and that Dr. Stokoe had Mr. Hennessey in the hospital [89] in November, 1949, I believe it was. Now, did you see Mr. Hennessey at your office visiting with him, or elsewhere in and about Billings between those times, as to your best recollection?

(Testimony of Harry R. Soltero.)

A. To the best of my knowledge, I don't believe so.

Q. You don't think you did?

A. I don't think so; I cannot remember any specific occasions until I saw him in the hospital with Dr. Stokoe.

Q. That is the occasion in 1949 when he had laryngitis?

A. No, I don't remember that time; I do recall the time he had the problem with the foot. I do recall that I was quite surprised it happened.

Q. That was in January, 1950?

A. 1950, yes.

Q. To the best of your recollection you did not visit with Mr. Hennessey or see him in and about Billings between June of 1949 and January, 1950?

A. I don't recall.

Q. If you did see him, Doctor, he didn't register any complaint to you about his shoulder condition?

A. That's right, because if he had registered a complaint, I think I would have remembered of having seen him.

Q. He didn't return then after you gave him, as you state, I believe, two or three diathermy treatments; he didn't come back for further [90] treatments?

A. He didn't come back and complain of any further things.

Q. As a result of that shoulder injury, and you told him it might bother him for a period of six months, I presume you recommended to him he

(Testimony of Harry R. Soltero.)

take care of himself during that time to not aggravate that condition in any manner?

A. I believe I told him about what it would do, and I probably very likely did tell him to take care of himself.

Q. You don't remember whether he followed your instructions in that regard or not?

A. I gave him no specific instructions.

Mr. Angland: That is all.

Redirect Examination

By Mr. Doepker:

Mr. Doepker: May I inquire a question I overlooked, your Honor?

The Court: Yes.

Q. Dr. Solter, confining your answer to the services that you rendered Joseph P. Hennessey after June 2nd on, with respect to this incident you have testified to when the man fell on him or reinjured his right shoulder, what was the reasonable value of the services which you rendered to him in that connection in the year 1949, and the summer of 1949?

A. You mean just for that specific instance?

Q. That specific part, yes. [91]

A. It was approximately \$12.

Q. \$12, that is all.

Mr. Angland: That is all.

The Court: You may be excused, Doctor. Does he have to remain, or may he be excused?

Mr. Doepker: We would like to have him excused.

The Court: Is that agreeable?

Mr. Angland: Subject to recall if something develops in the case.

The Court: Very well.

(Witness excused.) [92]

DEPOSITION OF FAY R. LIVINGSTON
having been by me first duly sworn to tell the truth,
the whole truth and nothing but the truth, upon
examination, deposed and testified as follows:

Direct Examination

By Mr. Doepker:

Q. Will you please tell us your name, sir?

A. Fay R. Livingston.

Q. And you reside, where, sir.

A. 356 Fairmont. That is in Alameda.

Q. Close to, or in, Pocatello, is it?

A. Yes, sir.

Q. In Pocatello? [44*] A. Yes, sir.

Q. How long have you resided in Pocatello, or around Pocatello, Mr. Livingston?

A. Very near—a little over six years.

Q. You then resided in and around Pocatello on June 2nd, 1949? A. Yes, sir.

Q. And on the second day of June, 1949, by whom were you employed?

*Page numbering appearing on page of original Reporter's Transcript of Record.

(Deposition of Fay R. Livingston.)

A. By the United States Weather Bureau.

Q. And what were your hours of duty on that day?

A. Eight in the morning until four thirty.

Q. From eight in the morning until four thirty in the afternoon?

A. Yes, sir.

Q. Now, on the second of June, 1949, what particular work were you doing for your employer, the Weather Bureau, the United States Weather Bureau?

A. Well, the regular work of taking observations, weather observations, and making maps, plotting radio sound observations.

Q. Where was the United States Weather Bureau located with reference to the terminal building at the Phillips Field on the second of June, 1949? [45]

A. Well, it is in the west end—the northwest end of the administrative building.

Q. Was the Weather Bureau in approximately the same location in that building at that time as it is at the present time?

A. Yes, sir.

Q. Entering the terminal building, or the administration building at Phillips Field at Pocatello, or near Pocatello, would you come into an area that is called the lobby of that building, a waiting room?

A. Well, that would depend on which door you came in. If you came in—there are about four entrances, two of which come into the lobby.

Q. Is there an independent entrance from the

(Deposition of Fay R. Livingston.)

outside into your department, or the department of the United States Weather Bureau?

A. Yes, sir.

Q. And where does that entrance come in from?

A. It is on the northwest side.

Q. The northwest side? A. Yes, sir.

Q. Do you remember whether the floor of the U. S. Weather Bureau rooms in that building was about on the same level as the lobby floor on the second of June, 1949? [46] A. Yes, sir.

Q. It was? A. Yes, sir.

Q. In connection with your employment did you have occasion on the second of June, 1949, to use a room that has been referred to here as the theodolite room? A. Yes, sir.

Q. And how would you get to that room from the main quarters of the U. S. Weather Bureau on that day?

A. Well, there is a door on what we might call the west end of our quarters into a hall, and in this hall is stairs leading up on top of the cement vault, and from the cement vault is another short stairs leading up on a platform where the theodolite is located.

Q. What are the functions of a theodolite?

A. We track the balloon up to its maximum height for the purpose of determining the direction and velocity of wind.

Q. Well, are there instruments located there that you use in connection with your work?

A. Yes, sir; on the platform.

(Deposition of Fay R. Livingston.)

Q. I would like to have you examine, please, a sketch that has been marked here as Plaintiff's Exhibit "A" for identification, and you will observe a legend here, "Theodolite room above the vault," indicating an area on the sketch? [47]

A. Yes, sir.

Q. Also a stairway—two stairways, we will say, at right angles, one with an arrow pointing to the west, and another with the arrow pointing to the north, do you recognize that as a sketch of the stairway leading from the floor of the theodolite room down into the hallway that you referred to?

A. Yes, sir.

Q. Would that be approximately the relative position of that stairway for sketch purposes—I mean on the second of June, 1949?

A. Yes, sir; for sketch purposes.

Q. So leaving this area that is indicated by the arrow, and marked "Theodolite room above vault," you would follow the direction of the arrow downstairs into the hallway; is that right, sir?

A. Yes, sir.

Q. And then after getting into the hallway to the north of the second arrow, where would your U. S. Department of Commerce, or Weather Bureau room, be?

A. It would be to the east.

Q. Would you write in there, Mr. Livingston, please, "Weather Bureau Room," just in that area, please?

A. Yes. (Witness marks on Exhibit "A.")

Q. You have now with pen and ink written a

(Deposition of Fay R. Livingston.)

legend, [48] "Weather Bureau Quarters," to the east of the hall stairway that we have referred to; is that right, sir? A. Yes, sir.

Q. Now, coming from the Weather Bureau quarters then, is it true that you would go through the west wall of those quarters into a hallway, on the second of June, 1949, in order to come up into the theodolite room above the vault?

A. Yes, sir.

Q. And then after getting to the floor of the theodolite room, to get to your theodolite instruments, where would you have to go—or where did you go, at least, on that second of June, 1949?

A. There is about eight or nine stairs from the top of the vault up to the platform.

Q. And I observe on this sketch an arrow leading from a legend, "Stairway to Platform," is that the stairway to which you refer? A. Yes.

Q. Is that right? A. Yes, sir.

Q. Now, then, Mr. Livingston, in order to reach this instrument that you have named "Theodolite instrument," would you as a part of your employment have to walk up these eight or nine stairs to that platform to use that instrument? [49]

A. That is true.

Q. And the instrument then would be directly above this platform, would it? A. Yes, sir.

Q. Now, what would there be then, or what was there on the second of June, 1949, above this platform, up here (indicating), above it?

A. The theodolite?

(Deposition of Fay R. Livingston.)

Q. Yes. A. Is that what you want.

Q. Dome, I am referring to.

A. I see. There is a dome on top of the roof; yes.

Q. And that dome, was it constructed then so you could put an opening in that dome so that you could leave out a balloon, or observe the weather, or something of the sort?

A. We don't release our balloons there. We release them from ground level.

Q. I see.

A. We use the dome as an observation point to observe the balloons.

Q. Then seated, or standing, on the platform that we have indicated above the floor of the theodolite room, as a part of your employment you can use this dome above the platform to observe these balloons; is that right? [50] A. Yes, sir.

Q. Now on the second of June, 1949, was there a plug, or electrical outlet, somewhere in the vicinity of that eight or nine stair stairway and the platform?

A. Yes, sir. As I recall it is directly at the top of the stairs.

Q. Then there appears here on this sketch "approximate position of 110-volt outlet," with an arrow leading to a cross, that cross being to the south of the platform. That outlet then would be in the south wall, would it?

(Deposition of Fay R. Livingston.)

A. That is correct.

Q. Above the stairway? A. Yes, sir.

Q. And approximately at the top of it?

A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. On the afternoon of the second of June, 1949, in going to your work at the theodolite instrument, did you encounter a wire, or an extension, that was stretched across the stairway there?

A. Not going to the theodolite, no, sir.

Q. When did you encounter it?

A. Coming down, after I had finished my balloon run. [51]

Q. You had then taken a balloon run as part of your employment, had you? A. Yes, sir.

Q. And had gone up to the platform in the theodolite room; is that right? A. Again, sir?

Q. You had gone up to the platform in the theodolite room as a part of your work, had you not?

A. Yes, sir.

Q. And then leaving that platform and coming back down, will you say whether or not you encountered an extension in some manner?

A. Yes, sir; I did.

Q. Did you trip on it, or something?

A. I didn't exactly—I don't recall if I tripped or not, but I do know that I pulled it out of its socket in some way.

Q. I see. And where did that extension lead, Mr. Livingston, on that afternoon?

(Deposition of Fay R. Livingston.)

A. It went into the attic.

Q. And from the approximate position of this 110-volt socket, did that extension lead through some opening in the theodolite room into the attic?

A. Yes, sir. [52]

Q. And what opening was it?

A. Well, there is a small opening there—they call it a cubby hole—I figure it is about—well, you have already given the measurements of it. It is the only one there.

Q. And that extension then led from that socket approximately along into the attic through that opening; is that right? A. Yes, sir.

Q. Now, did you have occasion to examine this extension, or for any purpose determine anything about that extension, on the afternoon of the second of June, 1949?

A. I noticed it. I disconnected it from the socket and I was concerned I might have left somebody in the dark in the attic.

Q. And then what, if anything, did you do on that occasion?

A. Well, as I recall there is a box there you step on to get up into this cubby hole, and I stepped up on the box and leaned—these lights, as I recall, was in the extreme southern end of the attic, and to make certain there wasn't anyone working in there I attempted to step out on this ceiling joist and look back in there to see if there was anyone there, and I missed the ceiling joists and fell through the ceiling.

(Deposition of Fay R. Livingston.)

Q. Fell through the ceiling? [53]

A. Yes, sir.

Q. Now, before you had made the examination into the attic that you mention, did you connect up the extension into the socket again so you did have light, or not? A. No, sir.

Q. You did not? A. No, sir.

Q. What was the condition of this attic space with reference to whether or not there was any natural light in there on that afternoon, in the attic space?

A. There was no natural light other than what came through the cubby hole I was standing in.

Q. I see. Would you say then the entire attic space was dark as you looked in on that occasion?

A. I would say it was dark; yes, sir.

Q. And stepping in then to determine whether or not there were any workmen that had been using that light was when you fell through between the joists; is that right, sir? A. Yes, sir.

Q. And what is your present age?

A. I am thirty-one—thirty-two, excuse me.

Q. And on the second of June, 1949, you of course would be——

A. I would have been twenty-eight. [54]

Q. How long had you been employed by the Weather Bureau? A. At that time?

Q. Yes.

A. Well, approximately six years—a little over six years.

(Deposition of Fay R. Livingston.)

Q. You had been working for them then continuously, had you?

A. Yes, sir. Not at this location, however.

Q. But you had been employed by the United States Weather Bureau for a period of six years?

A. Yes, sir.

Q. At that time? A. Yes, sir.

Q. And you are still following that employment at the present time? A. Yes, sir.

Q. When you fell through the space there, into what room did you fall?

A. Into the men's lavatory.

Q. Was there anyone in there on that occasion that you remember? A. Two men.

Q. And did you recognize one of them as being Joe [55] Hennessey—you didn't know Joe Hennessey at the time? A. No, sir; I didn't.

Q. But did you learn that was his name, one of the men, or not?

A. Yes; it was several years later, however.

Q. You didn't know at that time who the man was you fell against? A. No, sir.

Q. What did you weigh, approximately, on that occasion?

A. Well, my weight varies between one hundred fifteen—I have weighed one hundred and thirty when I was in the army, but that is the most I have ever weighed.

Q. So your weight would run between one hundred and fifteen and one hundred and thirty; is that right? A. Yes, sir.

(Deposition of Fay R. Livingston.)

Q. Had you had occasion to weigh some time before that?

A. No, sir; not to my knowledge.

Q. Mr. Livingston, how familiar were you with this attic space in the area above the men's wash room, and in the area directly to the east of the theodolite room?

A. I had very little knowledge of it.

Q. You were not acquainted with it, or had not had occasion to be in there before?

A. No, sir. We had occupied the building just two [56] weeks prior to the accident.

Q. So that then with regard to the theodolite room on the second of June, 1949, was that room lighted? Was there a light on there?

A. As I recall there is a light there. It would have been; yes.

Q. And it was lighted on that occasion?

A. Well, usually in the daytime there is sufficient light there to not require other light, artificial light.

Q. Oh, I see. At any rate, it was lighter in the theodolite room than it was in the attic space through that cubby hole; is that right?

A. Yes, sir.

Q. So you were going from a lighter room into a darker room; is that right?

A. That is correct.

Q. You did not, however, connect up the light extension, you didn't put that extension back into the socket and turn on the light, did you?

(Deposition of Fay R. Livingston.)

A. No, sir; I didn't.

Q. And there was an electric light on the end of that extension, was there not, on that occasion?

A. Well, I wouldn't swear to that, either. I know there was later on. [57]

Q. Later on in the afternoon, did you find a light on the end of that extension?

A. Well, I believe they turned the light back on when they were looking it over, Wally Wilson, when they were investigating the accident.

Q. And that would be approximately how long after the accident, would you say?

A. Well, I went down—I mean I went in and took my observation, my regular observation, and filed that, which is supposed to be filed around thirty minutes past the hour, and as soon as I had done that I notified Wally Wilson.

Q. That was the gentleman who preceded you on the stand here, the manager of the airport?

A. Yes, sir.

Q. And then immediately following that, in investigating the accident, Mr. Wilson turned on that light, did he?

A. As I recall, it was turned on some time during the process.

Q. Of the investigation; is that right?

A. Yes, sir.

Q. What, if any, injuries did you sustain? Were you hurt at all in this fall to the floor of the men's restroom?

(Deposition of Fay R. Livingston.)

A. Not to my knowledge, other than a bruised knee.

Q. Outside of a bruised knee you didn't sustain any [58] other cuts or abrasions on your body, did you? A. No, sir.

Q. Mr. Livingston, on the occasion of the second of June, 1949, when you went through this cubby hole into the attic, there was no artificial light in there at that time, was there?

A. I don't recall any. I could be wrong on that.

Q. But to the best of your recollection it was dark in there, and no light was coming through except what came through this cubby hole?

A. Yes, sir.

Q. You did not require any hospitalization of any kind so far as any injuries to yourself in that fall were concerned, did you? A. No, sir.

Q. And have suffered nothing except a skinned knee? A. That is right.

Q. What is your height, sir?

A. Well, offhand, I would say five feet four inches; that is approximate.

Q. During the afternoon, Mr. Livingston, of the —of June, 1949, did you know that there were workmen employed in remodeling that building?

A. I did not. [59]

Q. You had no personal knowledge of it?

A. No, sir.

Q. I will ask you if you will please mark an arrow showing the direction from the floor to the platform in this stairway, something similar to the

(Deposition of Fay R. Livingston.)

arrows that are pointing there (indicating). I want the arrow to point from the floor to the platform showing the direction, in the stairway itself.

A. Like this, sir (indicating) ?

Q. Yes. You are going up, though.

A. Oh, you want it going up ?

Q. Yes.

(Witness marks on Exhibit "A.")

Q. So that the arrow that you have now marked with pen and ink shows an arrow leading from the floor of the theodolite room to the platform which we have referred to; is that right, sir?

A. That is correct.

Q. Will you put your initials right at the tail of that? Write your initials, please?

(Witness marks on Exhibit "A.")

Q. You have now written your initials, "F.R.L.," is that right? A. That is correct.

Q. And would the position, the approximate position, of [60] the cubby hole with relation to this electrical outlet be as is indicated here on this sketch? A. Yes, sir; approximately.

Q. Approximately in that position; is that right? A. Yes, sir.

Mr. Doepker: You may inquire.

(Deposition of Fay R. Livingston.)

Cross-Examination

By Mr. Angland:

Q. Mr. Livingston, do you recall whether or not you did strike Mr. Hennessey when you fell through the ceiling?

A. I am not certain that I did; no, sir.

Q. You do recall you fell to the floor?

A. Again, please?

Q. You recall falling to the floor?

A. Yes, sir.

Q. What did you observe when you gathered yourself together a little bit, when you were on the floor there?

A. Well, I noticed the gentleman closest to me was brushing insulation off of him. There was considerable insulation fell down with me when I came through.

Q. That is insulation material that was up in the attic?

A. Yes, sir.

Q. Is that the gentleman who has been identified as [61] Mr. Hennessey?

A. I believe that is correct; yes, sir.

Q. You saw Mr. Wright here testifying today?

A. Yes, sir.

Q. Was Mr. Wright brushing himself off, or was it the other man?

A. It was the other man.

Q. Did that occur while you were still on the floor, that you noticed him brushing insulation off of his shoulder, or not?

(Deposition of Fay R. Livingston.)

A. I wouldn't say definitely.

Q. You don't know whether you were still on the floor, or whether you had stood up then?

A. No, sir.

Q. Was there any conversation between you and Mr. Hennessey and Mr. Wright?

A. I asked the gentleman brushing himself off if I had hurt him in any way.

Q. Did he reply to you?

A. He said no, that he was glad I didn't weigh a hundred and seventy-five or two hundred pounds, in a laughing manner.

Q. In a laughing manner? Did both men laugh about the matter, or what was the situation about that? [62]

A. Yes, sir; both men seemed to think it was a humorous situation.

Q. Were you pretty well shaken up, or not?

A. Well, I suppose the first few seconds it was quite a shock, but after that I had no adverse feelings from the fall.

Q. No, Mr. Livingston, just tell us why you went into the attic.

A. Well, I never went—I would say I didn't go into the attic; I didn't have any intention of going into the attic; I was just leaning into the attic to see if there were any workmen working there or not. I was quite certain there weren't because I hadn't heard anyone go up the stairs, but it was quite possible someone had gone up there while I

(Deposition of Fay R. Livingston.)

was out reading my temperatures, which are quite a distance from the building.

Q. You had no intention of going into the attic?

A. No, sir; the only purpose I had in mind was to make certain that I hadn't left someone in the dark.

Q. You weren't going in there then on any business for the Government? A. No, sir.

Q. Or that had anything to do with your work in the Weather Bureau? [63] A. No, sir.

Q. Did the Weather Bureau have any equipment at all in this attic?

A. No, sir; no equipment. They had considerable wiring.

Q. Did they have any equipment in there on the second of June, 1949? A. No, sir.

Q. Did they have any wiring in there then?

A. Yes, sir; they had—well, I wouldn't recall the amount of wiring, but we were taking observations of our wind instrument, so there must have been wiring in there.

Q. It was connected? A. Yes, sir.

Q. It was connected to your office in some manner?

A. Yes, sir. But I had no business to be in there in the performance of my duties.

Q. Mr. Livingston, if we issue a subpoena for you to be in Billings, Montana, for the 15th of January, you will be available and will be there to testify, will you? A. Yes, sir.

Mr. Angland: That is all. [64]

Mr. Doepker: That is all, Mr. Livingston.

(Witness excused.)

Mr. Doepker: I guess that is all, Mr. Angland.

Signed:.....

Subscribed and Sworn to before me this the 8th
day of January, A.D. 1953.

ED. M. BRYAN,
Clerk, U. S. District Court,
District of Idaho.

By,
RAY D. BISTLINE,
Deputy Clerk.

ROBERT SCOTT STOKOE

called as a witness on behalf of the plaintiff, being
first duly sworn, testified as follows:

Direct Examination

By Mr. Doepker:

Q. Will you please tell the Court your name?

A. Robert Scott Stokoe.

Q. What, if any, profession or calling do you
follow? A. I am a physician and surgeon.

Q. Are you duly licensed to practice your pro-
fession in Billings, Montana? A. I am.

(Testimony of Robert Scott Stokoe.)

Mr. Angland: We will admit that the doctor is a regularly [92*] licensed practicing physician and surgeon.

The Court: Very well.

Mr. Angland: And that he is a qualified physician and surgeon.

The Court: Very well.

Mr. Doecker: Thank you for the admission. I may desire to go a little bit into his training, however, your Honor, in addition to that.

The Court: Very well, proceed.

Q. Doctor, what school of medicine did you graduate from?

A. Marquette University in Milwaukee.

Q. And taking your courses there at Marquette University, did you have occasion to study as a part of your professional training the blood vessels and the treatment of diseases or injuries that are sustained to blood vessels, did you study that as part of your training?

A. That is a normal part of the curriculum, yes.

Q. In your subsequent years after you graduated from Marquette University, what further experience did you have in your profession?

A. Well, I had my internship in Oak Park Hospital just outside of Chicago.

Q. Is that a hospital, Doctor, is that a large hospital with many departments in it?

*Page numbering appearing on page of original Reporter's Transcript of Record.

(Testimony of Robert Scott Stokoe.)

A. It is not large, it was approximately a 150-bed hospital. [93]

Q. A 150-bed hospital, and you served your internship there, did you? A. I did.

Q. Did you practice in Illinois and Wisconsin?

A. I did not practice in Illinois, with the exception of my internship. In Wisconsin I did subsequently practice in a Veterans' Administration Hospital.

Q. Was that a hospital of some extent, the Veterans' Administration?

A. We had a Veterans' Administration Hospital in Milwaukee, we had a 1400-bed hospital, and then we had another 1500, we call them semi-patients, in a domiciliary unit. I spent one year in surgical residency at that hospital, and I spent six months on the staff with the domiciliary unit.

Q. I see, so you did have considerable experience in treatment of diseases, diagnosis, did you not? A. At that time I did.

Q. Did you then subsequently serve as a physician in the military or navy?

A. Between my internship, or, I should say, after my internship, I served one year in the Navy.

Q. The United States Navy? A. Yes.

Q. Then, did you have any other experience besides what you have related now before coming to Billings? [94]

A. I spent nine months at the University of Minnesota when I came out of the Navy in a continuation course in the basic sciences. It was partly

(Testimony of Robert Scott Stokoe.)

clinical, mainly the basic elements of medicine, you might say.

Q. When did you graduate from Marquette, Doctor? A. 1944.

Q. I believe you have already stated you have been practicing your profession in Billings, Montana, have you? A. I have.

Q. When did you first come to Billings?

A. I believe it was June of 1949, May or June of 1949.

Q. In the summer then of 1949, and you became associated with some clinic, did you not?

A. With the Soltero group.

Q. Is the Soltero group general practitioners?

A. They are.

Q. Would you say whether or not you are a clinic that has many patients, or not?

A. We have.

Q. During the year 1949, did you become acquainted with the plaintiff, Joseph P. Hennessey?

A. I did.

Q. And did you have occasions during the year 1949 to treat him in your professional capacity?

A. I did. [95]

Q. Do you recall now, Doctor, the first occasion of your having an occasion to treat Mr. Hennessey, approximately, I mean?

A. The first time that I treated Mr. Hennessey, to my recollection, was when I hospitalized him in St. Vincent's Hospital.

Mr. Doepker: May the record show we are ex-

(Testimony of Robert Scott Stokoe.)

amining Defendant's Exhibit 1, which consists of more than one part, one part consisting of nine sheets, one part consisting of 19 sheets—

The Court: Well, it is going to be confusing. Maybe you had better mark them separately, 1-a, 1-b and 1-c.

Mr. Angland: It is all one exhibit so far as the defendant is concerned. I have a purpose in stating that to the Court.

The Court: But mark it 1-a, b, and c, to keep it straight.

Mr. Angland: Yes, that is perfectly all right.

Q. Doctor, I presume that at the time you hospitalized him at St. Vincent's Hospital in the year 1949, that as a part of your hospitalization, you had physical examinations of him made, did you?

A. I made them, yes.

Q. And made them yourself, and did you also at that time have what is known as a graphic chart, showing the temperature and pulse and respiration, treatment record, and also a nurse's record that was made there? [96]

A. Yes, sir.

Q. And were those under your supervision as the attending physician?

A. Yes.

Q. Did the hospital and yourself keep these records in their usual course of the business of the hospital?

A. Yes.

Q. And were the records used by you for the purpose of treating the patient at that time?

A. Yes.

Q. To your knowledge were they correctly kept,

(Testimony of Robert Scott Stokoe.)

the records correctly kept? A. Yes.

Q. Can you, by referring to the records, Doctor, give an account of the condition that you found of Joseph Hennessey at that time, and the treatment that was made of him and the things that relate to his physical condition in that treatment?

Mr. Angland: I might say to the Court, if Dr. Stokoe hasn't had an opportunity to examine these records recently, we might save the time of everyone if the Doctor will take time and examine all the hospital records.

The Court: Well, it is about time to recess for the morning in any event. Court will stand in recess until 1:30 this afternoon.

(Noon recess.)

R. S. STOKOE

recalled as a witness on behalf of the plaintiff, having previously been sworn, testified as follows:

Direct Examination

By Mr. Doepker:

Q. Doctor, I believe that at the time we adjourned for the noon recess that we were inquiring of you concerning your acquaintanceship as a patient with the plaintiff in this case, Joseph P. Hennessey, and we were starting to direct your attention to the hospitalization which you had made of him at St. Vincent's Hospital in Billings, Montana. Do you recall that? A. I do.

(Testimony of Robert Scott Stokoe.)

Q. We were submitting to you a chart, a portion of Defendant's Exhibit 1 for identification, which the Clerk has marked as the portion 1-a of Defendant's Exhibit 1. The Court permitted you to review this chart that you have testified now was made [106] up largely under your direction, and also by yourself, and the graphic chart which relates temperature, pulse and respiration of the patient, treatment record, and also the nurses' record. Having had an opportunity to review this chart, Doctor, can you testify now what you treated him for then, at the occasion on the 29th of November, 1949?

A. May I read my diagnosis from the chart?

Q. Yes.

A. My diagnosis was acute laryngitis.

Q. And the acute laryngitis was sufficient for you to believe that he required hospitalization, was it, at that time?

A. That is correct.

Q. And at that time did you make a complete physical examination of the plaintiff, Joseph P. Hennessey?

A. I did.

Q. Are you in a position, aside from the record there, to remember all the details of it, or are you in a better position to testify from all the details of it by referring to the record?

A. I am in a better position to refer occasionally to the record at least.

Q. All right. Will you tell the Court what it was that you discovered in connection with that physical examination on that occasion?

(Testimony of Robert Scott Stokoe.)

A. He entered the hospital with the complaint of hoarseness of [107] 30 hours duration.

The Court: What is the date of this one now, pardon me?

A. November 29th, 1949.

The Court: Very well, proceed.

A. He also complained of the left side of the chest pains, and he also complained of pain in his upper abdomen of several months duration, which was worse on inspiration and on bending forward. This had become markedly aggravated the last few weeks before admission. At that time, his past history, as recorded on this chart—there is more than this on other charts—his past history included nephritis as a child, with no residuals to the patient's knowledge.

Mr. Angland: What was that word, to his knowledge?

A. No residuals—I had sequelae on the chart. He admitted having partaken quite heavily of alcohol recently before admission. The examination at that time revealed his head to be essentially negative except for some swelling in his throat. There were occasional bronchial, or abnormal breath, sounds heard in both lung fields at that time. His blood pressure showed some elevation, not marked. His heart was normal, although the rate was rapid as it normally would be with infection. His liver at that time was tender and it could be felt, it could be palpated at that time.

Mr. Angland: What was that last?

(Testimony of Robert Scott Stokoe.)

A. Liver could be palpated, yes, and it was tender; then the [108] striae were noted on his abdomen.

Q. Now, for a layman record, are you referring to some breaking of the skin of the abdomen that you observed at that time, is that what you refer to as striae?

A. Yes, because of his previous nephritis.

Q. All right.

A. Because we thought his liver might be involved, the laboratory test that we did included a very sensitive liver test. This test was negative, so at least his liver was considered functioning normally, even though tender and slightly enlarged on admission. His urine at that time was normal with the exception of a trace of albumin and a trace of acetone. His red count was mildly above normal, his red blood count, I should say, was mildly above normal. Another liver function test was also run which was within normal limits. X-rays of his lungs revealed increased markings in one area of his lung field, which the radiologist felt was compatible with sinusitis or a post-nasal drip, and these markings were not taken with any serious note. His course in the hospital was a slow but apparently complete recovery. He was discharged December 4th.

Q. With respect to the nurses' record in these charts, Doctor, will you explain to the Court the function of the nurses' record which appears in the St. Vincent's Hospital Exhibit to be on a blue form? [109]

(Testimony of Robert Scott Stokoe.)

A. The function of the nurses' record is primarily to help the doctor, possibly in his diagnosis, and in his treatment.

Q. And in the case of Mr. Hennessey, on the occasion we are now considering of November 29th and subsequently until discharged, will you examine that record and see whether you find anything in there to indicate something that would cause you as a physician to feel that it would affect his past or present condition in any way?

Mr. Angland: Read that question.

(Question read by reporter.)

Mr. Doepker: I am referring to the nurses' record.

Mr. Angland: Go ahead.

A. The routine observations were made by the nurses, including a mention of his hoarseness, shaky hands, sore throat, and a gradual improvement. I see nothing else.

Q. Among the complaints that he made at the time that you admitted him, you referred to him complaining of abdominal pains of several months' duration, is that right, is that correct, Doctor?

A. That is correct.

Q. Then at the time of his discharge from the hospital, Doctor, what have you to say with reference to his condition as to cure, or whether he was still suffering some illness or disability at that time?

Mr. Angland: Just a minute, Mr. Doepker. Is

(Testimony of Robert Scott Stokoe.)

this as to [110] the treatment he received then, or as to his complete physical condition now?

Mr. Doepker: I am referring to the complete physical condition at the time of his discharge in November, whatever this date is again?

Mr. Angland: December 4th.

Mr. Doepker: He was discharged on December 4th?

Mr. Angland: I believe that is what the doctor said.

Mr. Doepker: About his general condition at that time. What is your recollection, or what does the record show his condition to be at that time?

A. His condition would be improved. I could not say that he was completely cured as I rarely leave a person in the hospital until they are completely cured. He was definitely on his way to recovery, generally speaking, when he left the hospital.

Q. Now, then, on that occasion, may I inquire, Doctor, if you found anything in the nature of disease or trauma connected with his heart?

A. Nothing.

Q. Or did you find anything the nature of disease connected with his lungs to the extent that it would be causing an infection or an abscess or something of that nature?

A. No, as I previously mentioned, there were some increased lung markings on the X-ray, but they were not taken to be of clinical significance. [111]

Q. The examination that you made at that time,

(Testimony of Robert Scott Stokoe.)

was there anything indicative in that examination as to nephritis or him suffering at that time from nephritis?

A. He was not at the time suffering from nephritis, from active nephritis. He did show a trace of albumin, which could be the residuals of nephritis, and not be of clinical significance, or it could be caused by the partaking of alcohol.

Q. The condition, then, of Mr. Hennessey, on the 4th of December, is now as you have described it, as near as you could tell from your treatment and observation of him, is that right, on the 4th of December, 1949? A. Yes.

Q. Then, when did you next have occasion to have Mr. Hennessey as your patient?

A. The next recollection that I have of seeing Mr. Hennessey was the day that he was admitted to Deaconess Hospital.

Q. Are you now referring, Doctor, to the 3rd day of January, 1950? A. I am.

Q. And on the 3rd day of January, 1950, did you have occasion to have Joseph Hennessey again as your patient? A. I did.

Q. And in connection with that treatment, you stated that you had him in the Deaconess Hospital, is that right? [112] A. That's right.

Q. I am now referring to Defendant's Exhibit 2 for identification, and I want to inquire about the first part, or the condition of Mr. Hennessey from the date of the admission on the 3rd of January through for a period of three days subsequent to

(Testimony of Robert Scott Stokoe.)

that to start with. From your independent recollection, Doctor, can you relate that condition, or would you be in a better position to give the Court the facts by referring to the hospital chart that was kept of his case at that time?

A. I am sure I could be more accurate from the chart as to his history.

Q. In connection with your treatment of this patient or of any patient, what do you say as to the necessity for a doctor to have a history in order to make an intelligent diagnosis?

A. It is most important in some cases.

Q. And in this particular case, would you say it was important? A. Yes.

Q. Now, with regard to the chart that you have referred to here as the Deaconess Hospital chart, and which we have referred to as Defendant's Exhibit 2 for identification, were you the physician in charge of Joseph P. Hennessey during the entire time that he spent in the hospital on that occasion? A. I was. [113]

Q. And did you yourself have supervision of the records that were made at the Deaconess Hospital at that time? A. Yes.

Q. Did you yourself also keep records at that time? A. I did.

Q. Do those records contain the same outline, I mean the same things that are in the hospital records, and that appeared in the previous exhibit that we were referring to with respect to the doctor's

(Testimony of Robert Scott Stokoe.)

records and the nurses' records and X-rays and laboratory tests and so on?

A. Possibly I didn't understand you. I didn't keep records separately. The only records to do with the hospitalization are all found in the chart.

Q. So that so far as the first few days are concerned, they were just a part of this entire record, is that what you refer to? A. Yes.

Q. As far as you know, Doctor, were they kept in the usual course of the business of the hospital, entries made in the usual course of the business of the hospital? A. They were.

Q. And were they correctly made?

A. I am quite—within reason they were correctly made, yes.

Q. And as far as that you yourself have entered in here, they represent your record of this case, do they? [114] A. That is correct.

Q. May I ask you to refer to Defendant's Exhibit 2 and relate to the Court, if you can segregate it there, the first part, or the part of the case you were concerned with from the 3rd of January and for the first three days?

A. As I have stated on the history, some one month previous to this admission, he had severe laryngitis. His cough persisted up to three days before admission, before this admission. When the cough became severe, he developed a temperature and a general malaise or ill feeling. He was hospitalized because of this increase in his cough and his temperature.

(Testimony of Robert Scott Stokoe.)

Q. Well, now, Doctor, at this time what have you to say as to what you considered him to be suffering from as far as the first three days, that would be the 3rd, 4th and 5th, at least, of that hospitalization?

A. I believed that he had bronchial pneumonia.

Q. May I inquire if you have a recollection of this case, independent recollection, I mean, of the case of Mr. Hennessey on this occasion?

A. Yes.

Q. I am referring now to your diagnosis of bronchopneumonia. Would you say it was severe or mild or border line in your estimation as a physician?

A. It was a border line case. The chest X-rays taken at that time was read by the radiologist as a normal adult chest. [115]

Q. The chest X-rays would disclose what organs particularly?

A. The lungs, heart and the chest wall.

Q. Then as far as the examination up to the 6th of January, 1950, you found no condition other than the bronchopneumonia, is that right, or will you state, Doctor?

A. I found also an infected and edematous or swollen throat. He had, along with this border line pneumonia, an upper respiratory infection that had not completely cured from before. According to my chart, apparently, his abdomen had cleared. There was also the blood pressure, I again noted a mild elevation. He showed a faint trace of albumin—I

(Testimony of Robert Scott Stokoe.)

beg your pardon—there was no urinalysis before January 9th, 1950.

Q. All right. Then from your treatment, examination and consideration of the condition of this patient in the first part of January, 1950, did you find any pathology connected with his heart, liver, or his lungs? A. Only as stated.

Q. And that was a border line bronchopneumonia?

A. With an upper respiratory infection, yes.

Q. And that upper respiratory would be the larynx and trachea?

A. Throat, larynx and trachea, yes.

Q. Did you find upon that occasion any heart murmur? A. I found no murmur.

Q. Did you find any indication upon his admission to the hospital at that time of any abscess upon the lungs? [116] A. No.

Q. And on that occasion did you find any other condition in the heart that caused you to feel that the heart was damaged or that the heart was afflicted in any manner by disease? A. No.

Q. What was the progress then of that case from the 3rd of January, 1950, to the 6th of January, 1950? A. His progress was satisfactory.

Q. Go ahead, Doctor.

A. His temperature improved and his general feeling of well being improved, and I don't have it in the chart—the day before planned discharge, we had discontinued all of his medication with the exception of his cough syrup, which we had changed

(Testimony of Robert Scott Stokoe.)

to have him ask for that if he needed it, and he was up and about the day before discharge.

Q. All right. That planned day of discharge was what day, then, Doctor?

A. The planned day of discharge was January 7th.

Q. 1950?

A. Yes. I had told him on the 6th if everything was still all right on the next morning that he could go home.

Q. Now, then, did something develop subsequent in this case after the 6th day of January, 1950, Doctor? A. Yes. [117]

Q. Will you tell us what it was in chronology, what from the physician's standpoint.

A. May I read portions of this from the chart for accuracy?

Q. That is your most accurate record, is it not?

A. Yes.

Q. Those are the facts as near as you can derive them?

A. That is correct, that is the reason I would like to read them.

Mr. Angland: As a matter of fact, Doctor, you couldn't testify accurately without the use of the chart as to all matters——

A. I could not testify as accurately.

Mr. Angland: That is what we want to know.

A. This is written at the time and is my impression as it was at that time. Quoting from the progress record on January 7th, 1950—well, before

(Testimony of Robert Scott Stokoe.)

that, I would like to state from memory that I do remember that I was home that morning at roughly nine o'clock, possibly slightly before. I got a call from the nurse and she told me that Mr. Hennessey had been in the bathroom, I believe, and had collapsed with severe pain in his lower extremities, and I ordered a sedative given and immediately went to the hospital, and I wrote in the chart that morning, "Patient awakened with numbness of both feet. This progressed up both legs to his knees, and he developed severe pain around the third lumbar vertebra—" That is one of the lower lumbar vertebra. The pain was excruciating, and when [118] seen by me he had a partial whitish cyanosis of both feet with coldness and bilateral absent lower leg reflexes, severe tenderness about his third lumbar spinous process. He had responded well to a quarter grain of morphine with atropine. Emergency X-rays were taken of his back, which I had thought revealed two fractured, two old fractured transverse processes on the left, which incidentally the radiologist did not feel existed. There was an area on his right foot—I beg your pardon. His foot within one and one-half hours became normal—if I may add memory, I believe there was some residual pain in his right heel, even though I put down here that the foot was essentially normal. His reflexes then began returning in his left foot, though the above-mentioned discoloration persisted. Because of finding an elevated pressure on entrance with this case the night before entrance, or the

(Testimony of Robert Scott Stokoe.)

night before intended discharge, I had taken his pressure, and it had come down. The systolic, the upper reading, was normal at 124; the diastolic reading was still mildly elevated. That morning due to the excruciating pain, I believe, his pressure became markedly elevated. I noted at the time his heart was still negative, and I believed it to be at that time a vasospastic phenomenon, and he was treated symptomatically for a few hours. Then he remained in bed, and he improved to about 3:30 in the afternoon when he had an acute recurrence of his pain behind his left knee, extending on down to his great toe. It was [119] realized at that time that the reason for the marked vessel spasm was because of a saddle embolus or condition, a clot, in the aorta, temporarily lodged where aorta splits to go down either leg. Evidently the larger portion of the clot slipped off and went down to behind his left knee in the artery. He was then put immediately on medical treatment for an arterial embolus, including drugs and sympathetic nerve injection.

Q. Now, Doctor, at this point, may I inquire, will you relate to the Court the evidences which you had available to substantiate your diagnosis of the block or blood clot in the aorta? Will you relate what those specific symptoms were, please?

A. There was—when first seen—a total loss of color, or nearly a total loss of color in both feet and up nearly to both knees. There was obviously no blood coming into the legs, or if there was any, it was a very minimal amount. Then with the marked

(Testimony of Robert Scott Stokoe.)

temperature change, his legs were extremely cold. That was the most important—those are the most important, significant features.

The Court: That is the condition that existed when you first saw him?

A. Yes, sir.

The Court: You didn't at that point think, however, that it was a clot in the aorta? [120]

A. Because he responded so well to morphine, we didn't originally, but then subsequently by what happened, it had to be a saddle embolus which had slipped off and gone on down into the leg further.

The Court: Then, it would be what happened that indicated to you there was an embolism, not the original condition as you say?

A. Well, both together, yes.

The Court: Very well.

Q. All right. Then, Doctor, in addition to the absence—the whiteness and coldness of the leg, what else was there at that time that indicated to you that this was an aorta damage? Was there anything else that you could point to and say this clot is in the aorta, or not?

A. The pain in the back would go along with the saddle embolus, yes.

Q. And the pain in the back was located at what point?

A. In the area of the third lumbar vertebra, or lower back.

Q. I see. Did you, during the course of this original diagnosis find anything direct or palpable, feel-

(Testimony of Robert Scott Stokoe.)

able evidence of the exact location of this embolus at this time, sir? A. At which time?

Q. The first part, the 7th or 8th or 9th. At that time was there something you could feel in a blood vessel, I mean actually put your finger on it and feel? [121] A. No.

Q. Your deductions are from the symptoms that you have related, is that true, Doctor?

A. That's right, an embolus in the space behind the knee is in an artery that is in very deep and it is extremely difficult to feel that artery on some people, even when everything is normal. You just barely can get a pulsation behind the knee.

Q. Did you then treat that condition, or did you start immediately to treat that condition on the 7th of January, 1950? A. We did.

Q. What is it you did to treat it?

A. We injected the sympathetic nerves to the left side, to the left leg, by injections in the back just alongside the lumbar spine. We gave him blood anti-coagulants, that is, drugs to prevent further blood clot formation, and, questionably, to help dissolve a clot, and at that point of division, we gave him heavy sedation to attempt to break the spasm in the blood vessels distal to the point where the clot forms so that the other blood vessels extending from in the thigh to down in the calf could take over and supply the rest of the leg with blood.

Q. All right. Now, you used something in the spine. That is, [122] was that some drug?

A. Just outside the spine, yes, sir, we used novo-

(Testimony of Robert Scott Stokoe.)

caine. Incidentally, before that we had attempted something a little less complicated, even before the clot formed or went down into the left leg. We had used some injections of novocaine or procaine, an anesthetic agent, and that had not worked out well intervenously. Mr. Hennessey did not tolerate it. That was the same substance put into his back, not into the spine, but alongside the spinal column.

Q. You also used at that time, as you have stated, some anti-coagulants, is that right?

A. Yes.

Q. What were they?

A. Heparin and dicumarol.

Q. Will you relate at this point what quantity of that was administered by you to fight coagulation of the blood?

A. He was given the recommended initial dose of 400 milligrams of heparin and 200 milligrams of dicumarol initially. He was also given other drugs to attempt to break the spasm in the vessels.

Q. Will you relate those?

A. Papaverine and morphine. He was also given penicillin immediately prophylactically to prevent infection. He was also given a barbiturate for rest along with his morphine—I beg your pardon, he was not given the barbiturate until the [123] next morning when we were going to again inject his back.

Q. Then you immediately started in to attack the condition of clotting of the blood, did you not?

A. That is correct.

Q. And used everything to your knowledge

(Testimony of Robert Scott Stokoe.)

known to medical science to contest that condition, is that right, Doctor? A. That is correct.

Q. Now, will you search your record and see whether you have any record to describe the appearance of the leg, that is the change, or progress, in the appearance of the leg?

A. Yes, I wrote on the progress notation on January 8th, the next day, that the area of gangrene was apparently decreasing with the anti-coagulant therapy and lumbar paravertebral block. He was reblocked again that morning with apparent slight improvement. I noted that his left great toe and heel still appeared to be the most severely affected portions.

Q. All right. Doctor, when you refer to gangrene, will you translate that into a layman's understanding, from that standpoint, so that the Court may have an idea what you refer to there as gangrene?

Mr. Angland: Just a minute, Doctor. Your Honor, there hasn't been any connecting link, as I view the doctor's testimony thus far, between the accident or events down at Pocatello on June 2nd, 1949, and this hospitalization. He is showing a very aggravated condition here that the plaintiff [124] suffered from, and, of course, we would admit, we would admit from an examination of the hospital chart that there isn't any doubt but what the plaintiff was hospitalized and had a very severe condition, but I don't see the value of the doctor's testimony. He has now identified the symptoms——

(Testimony of Robert Scott Stokoe.)

The Court: I rather anticipate he is going to connect it up with an opinion later in his testimony.

Mr. Doepker: I am going to try to, your Honor. In the course of our examination, we expect to connect it up.

Mr. Angland: He has now identified the existence of a blood clot in the aorta.

The Court: Yes.

Mr. Angland: What I am getting at, what does that have to do with this accident. He must first establish that and then, of course, the course of treatment thereafter becomes material.

The Court: If it is connected.

Mr. Angland: I don't think it is material unless there is a connecting link there.

The Court: He has to connect it up, but I am not going to tell Mr. Doepker how to try his case——

Mr. Doepker: I think we have to have symptoms to work with in order to have an intelligent diagnosis.

The Court: That is your problem. We can take a little rest now. Court will stand in recess. [125]

(10-minute recess.)

Mr. Doepker: May he answer, your Honor?

The Court: Yes.

A. By definition, gangrene is death of tissue en masse.

Q. All right. Then going from the 7th on to the

(Testimony of Robert Scott Stokoe.)

subsequent days, what have you to relate to the Court in connection with the symptoms and progress of this condition that you have thus far described?

A. He had a gradual improvement with the areas of gangrene, the superficial skin dying off and new skin was formed underneath, and then because of the lack of blood to the muscles of the calf of the leg, there was destruction of tissue, destruction of muscle, destruction of nerve tissue, and only part of that could recuperate, could come back, so he was left with some permanent residuals.

Q. And what were those permanent residuals, Doctor?

A. In his leg, in his ankle, and his foot, that is, his calf, his ankle and his foot.

Q. Do you refer to the drop foot that he has at the present time? A. Yes.

Q. And the things that you have now testified to have not returned completely, is that right?

A. That is correct.

Q. Then, with respect to the dicumarol and the other drug, I [126] forget the name of it.

A. Heparin.

Q. Heparin, how long did you continue to administer that, according to the hospital record?

A. The last dose was given February 4th or 5th, February 4th.

Q. February 4th, 1950, is that right?

A. That is correct.

Q. Now, Doctor, with respect to the chart that

(Testimony of Robert Scott Stokoe.)

you are examining, are there any subsequent indications there of anything that, to your mind as a doctor, would affect his condition that you have related. By that I mean was there anything else that developed during the course of this hospitalization?

A. There were no other conditions developed, no.

Q. And the rest of the record, Doctor, that comprises the Defendant's Exhibit Number 2, besides the things you have alluded to, that is, the X-ray findings and the laboratory findings and the other records that appear in this chart relating to the nurses' history, is it, and the things that transpired during the time that he was under their treatment?

A. That is correct.

Q. And the nurses' chart also shows the food and the treatments that were administered under your direction, is that right?

A. That's right.

Q. Also what is known as the Buerger's exercises, is that [127] right? A. Yes, sir.

Q. Subsequently, before he left the hospital, was there an X-ray examination made for the purpose of determining whether there was any pathology in the heart, the aorta and lungs, bases, and the diaphragm—was there an X-ray examination made under your direction for the purpose of examining that condition at that time? A. Yes, sir.

Q. And at that time did they also X-ray the right and left ankles laterally and A-P, as the doctors call it, or front and back?

(Testimony of Robert Scott Stokoe.)

A. Front and back, that is correct.

Q. Then what have you to say as to what was disclosed in those examinations and so forth, if you found anything wrong with any of those organs?

A. All X-rays taken were negative.

Q. And that last X-ray then was taken on what date? A. February 19th.

Q. February 19th. Will you explain to the Court, Doctor, the known sources of blood clots that are known to your knowledge at this time, from your reading or experience, to the medical science?

A. They must arise within the vascular tree. They can arise, rarely, from a vein anywhere in the body, and if they [128] are small, and if the patient has a defect between the right and left side, between the right and left auricle. It is conceivably possible, but doubtful—I don't remember ever reading of any case that a clot could get through the auricle, that is, from the right to the left auricle and then get out into the arterial circulation, shunting the lungs. That is the first source. The second source of embolus would be from the blood vessels of the lungs themselves, that is, the pulmonary vein or contributor to the pulmonary vein. The next source of embolus would be from the valves of the heart, that is, the left side of the heart, or from the wall of the heart muscle. The next source of embolus would be the wall of the aorta. It has to arise, that is an embolus must arise from within the lining of the blood vessel.

Q. And so the Court may understand that con-

(Testimony of Robert Scott Stokoe.)

dition, how does it arise in the walls of the blood vessel? A. How may it arise?

Q. Yes.

A. It can arise from infection in the wall of the blood vessel or from something eroding through into the inside of the blood vessel, an infection.

Q. What was that?

A. An infection eroding into the inside of the blood vessel, or it can arise from injury to the lining of the blood vessel, or it can arise from changes within the blood vessel wall itself [129] which will be found with age or other circumstances.

Q. Now, in your acquaintanceship with the history of this case, did you find any evidence of infection that would cause you to feel that this embolus arose from an infection, or to suspicion it even?

A. We did not at the time feel that way.

Q. All right, now, then did you find any of those conditions with the heart that you have related, that is, anything in the heart?

A. No, we didn't; we took electrocardiographs and we repeatedly listened to the heart and watched the pulse and we found no heart disease.

Q. Did you find any condition in the lung area that would lead to the condition you have diagnosed in this case? A. No.

Q. What would be the effect upon a blood clot, or what do doctors call it. What is the doctor's name for a blood clot that adheres to the wall of a blood vessel? A. Thrombus.

(Testimony of Robert Scott Stokoe.)

Q. What would be the effect upon, to assume a thrombus had formed in the wall of a blood vessel, of a resting for a period of three days, such as Mr. Hennessey had experienced in the hospital there, from the 3rd to the 6th or 7th of January?

Mr. Angland: Just a minute. Your Honor, there isn't anything in this case to show Mr. Hennessey experienced a [130] thrombus for three days. I'll object to that as not being based upon evidence presented in this case.

Mr. Doepker: We got a thrombus. Let's see where it came from.

The Court: He is just asking the doctor's opinion if a thrombus existed, what would be the effect of rest for three days, is that right?

Mr. Doepker: That's right.

The Court: I will overrule the objection. He is not saying the thrombus existed, as I understand his line of testimony. He is questioning the doctor with reference to the general medical science; he is questioning the doctor with reference to the general medical science on what you call blood clots or thrombosis, or emboli, how they arise, and what happens with them under particular circumstances.

Mr. Doepker: Your Honor should know those things if you are going to intelligently follow this case.

Mr. Angland: The objection was based upon the proposition that counsel presupposed Mr. Hennessey suffered from that condition.

The Court: Assuming—I think probably the

(Testimony of Robert Scott Stokoe.)

question did presuppose that, but it won't make any difference to me because there is no proof——

Mr. Angland: I wanted to object to it for the record.

The Court: In other words, you can ask him hypothetically, but [131] not as to—you can't assume at this point that a thrombus existed in Mr. Hennessey's case.

Mr. Doepker: No, we can't.

The Court: Very well, proceed.

(Question read by reporter.)

A. Were there a thrombus attached to the wall of a blood vessel while a patient was resting in bed, it can either stay there as it was before, or under circumstances of bed rest with changes in the blood vessel accompanying bed rest, and the changes in pressure, the thrombus could break off and go on down the vessel as an embolism.

Q. Now, Doctor, as I recall the history, or what you have related, the first symptoms that appeared in this case appeared when Mr. Hennessey had arisen in the morning on the 7th, had gotten up preparatory to leaving the hospital, is that your recollection of it?

A. Either after getting up or just before getting up, I don't know which.

Q. And then I want to ask you further if there was any indication of any thrombus coming from the walls of the heart, that is, by reason of warty

(Testimony of Robert Scott Stokoe.)

growths or anything of that nature in your examination of this patient? A. There was not.

Q. Do thrombi, in medical experience, form immediately, or do they require some growth to form, I mean by that, some growth [132] of the thrombus itself?

A. A thrombus takes some time to form, yes, sir. A thrombus due to infection—I can't say specifically. A thrombus due to infection, a thrombus due to one cause might form at a different rate of speed than a thrombus due to another, because it depends upon how much injury there is to the blood vessel, or the wall, by the infection or injury. It depends upon the clotting mechanism of the patient, it depends upon the rate of flow of the blood. There are many factors which affect the speed of forming thrombi and how it acts.

Q. Do you, as a physician, know, or have you read of any case where a thrombus has formed in a period of hours or minutes, or even in a matter of days?

A. A thrombus will form in days, yes.

Q. In a period of days, is that right?

A. Yes.

Q. Now, Doctor, will you describe to the Court the position of the blood vessels in the abdomen with respect to the aorta and vena cava and the other surrounding tissues that surround the aorta and other blood vessels in that area there where that saddle is that you have related?

A. Your vena cava and your aorta lie somewhat

(Testimony of Robert Scott Stokoe.)

side by side, one slightly in front of the other, coursing down through the abdomen to the pelvis where they both split and run along the pelvic wall toward the back and sides. They lie immediately [133] in front of the vertebral column. There is a layer of connective tissue over the vessels and then there are other attachments of other organs and such to that connective tissue.

Q. Doctor, I have had a figure in a book denominated as a Bodyscope, Plaintiff's Exhibit 7. With reference to the saddle you spoke about and the surrounding tissues and this figure, illustrate how this saddle is located in the body, and the branches of the blood vessels that you have been testifying about into the heart and the lungs and down into the legs of a person. A. Yes.

Q. Will you indicate to the Court the blood vessels that you have been referring to, that is, the aorta, vena cava and the heart, for the purposes of illustration?

A. The vena cava is extending upwards toward the right side of the heart in blue, your lungs are up here in the first wall, the blood vessels to the lung are demonstrated in blue, and the blood vessels back from the lungs in red to the left side of the heart, out of which the aorta arises here (indicating), crossing down behind the heart and extending down thusly (indicating).

Q. And what is the saddle you referred to, Doctor, as the location of the embolus, where is the saddle that you have referred to?

(Testimony of Robert Scott Stokoe.)

A. The saddle is at the splitting of the aorta, commonly [134] medically called the bifurcation of the aorta, and that is where the embolus primarily hit.

Q. Now, the figures to the left segregate the red blood vessels and the blue blood vessels?

A. As the arteries and veins, yes.

Q. And which one represents the veins and which one of the figures represents the arteries?

A. The red represents the arteries.

Q. And the blue represents the veins, is that right? A. That is true.

Q. That would then show the course of blood vessels into the leg, does it?

A. That is correct.

Q. From the saddle you have been testifying to down into the legs, is that right? A. Right.

Mr. Doepker: We would like to use this, your Honor, just for the purposes of illustration.

Mr. Angland: No objection.

The Court: Very well, it may be admitted for that purpose.

(Chart called Bodyscope, marked Plaintiff's Exhibit 7, was here received in evidence, and is on file in the Clerk of Court's office in this cause.)

Q. Now, Doctor, in connection with your treatment of the case and in getting the history of the case, did you learn of any accident, accidents, I will

(Testimony of Robert Scott Stokoe.)

going on in the patient's body secondary to the embolus.

Q. Those examinations or checks, were they a part of the laboratory record of the hospital record of this case? A. They are.

Q. And they are shown upon these records, are they? A. They are.

Mr. Doepker: Your Honor, we would like to offer as an exhibit—that is, not everything—the chart of the Deaconess Hospital, with the exception of the Nurses' Record.

Mr. Angland: Your Honor, I object to any exceptions of the offer. It is all one chart; I think it is all part of the record. The doctor has testified it was all made by him or under his supervision.

The Court: The plaintiff may offer that part of it that he wishes to offer. You can offer the rest.

Mr. Angland: Very well, I have no objection. I will offer the balance of it later.

The Court: It is admitted.

(Defendant's Exhibit 2, being the Deaconess Hospital [186] Record of Joseph P. Hennessey, was here received in evidence, with the exception of that part thereof designated as the Nurses' Record. It is impossible to reproduce said exhibit in this transcript, and the same is on file in the office of the Clerk of the Court in this cause.)

Q. You have previously testified to a hospital record of St. Vincent's Hospital of the plaintiff,

(Testimony of Robert Scott Stokoe.)

have you, Doctor? A. I have.

Q. And this record is the admission, or of the admission of the plaintiff to St. Vincent's Hospital on November 29th, 1949, is that right?

A. That's right.

Mr. Doecker: Your Honor, we offer in evidence the portion of the chart of St. Vincent's Hospital that has been marked—to save time, your Honor, we offer Defendant's Exhibit 1, the portion thereof 1-A.

The Court: Any objection?

Mr. Angland: No objection.

The Court: Admitted.

(Defendant's Exhibit 1-A, being St. Vincent's Hospital Record of Joseph P. Hennessey, commencing 11-29-49, was here received in evidence. It is impossible to reproduce said exhibit in this transcript, and the same is on file in the office of the Clerk of the Court in this cause.)

Q. Doctor, in connection with the record which is in evidence in connection with the plaintiff from the Deaconess Hospital, basing your answer upon your own personal observation and treatment of this patient, and the records that are [187] here in evidence, I want to inquire whether, on the occasion of his attendance in the hospital between the 3rd and the 6th day of January, 1950, and up until the 7th day of January, 1950, from your examination of the plaintiff's lungs, would you say that

(Testimony of Robert Scott Stokoe.)

there was or was not a reasonable possibility—not possibility—a reasonable probability that his lungs on that occasion was or was not a source of an embolus? A. It was not.

Q. And with respect to your examination and the records of this hospital that have been introduced in evidence, whether or not, on that occasion, and for over the same period of time, would you say whether or not there was or was not a reasonable probability that the patient's heart was a source of embolus on that occasion?

A. As a reasonable probability, it was not.

Q. You did find an embolus, or what you have diagnosed as an embolus, in the patient on the 7th day of January, 1950, is that right, Doctor?

A. Yes, sir.

Q. Then, where would you look, eliminating the reasonable possibility of a source of embolus in the lungs and eliminating a reasonable probability of an embolus in the heart, where would you say, from your examination, that would leave the source of the embolus?

Mr. Angland: Just a minute, the wording of that question, [188] your Honor, is such that I believe he stated the possibilities and probabilities here. I think he said eliminating one possibility and the other reasonable probability. I will object to the form of the question.

Mr. Doepker: I will amend the question as to reasonable probabilities.

Mr. Angland: I am going to object further as to

(Testimony of Robert Scott Stokoe.)

the reasonable probability as to where he might look for the embolus. I think the Court would take judicial notice of the fact that the embolus might at the outset form any place in the body.

The Court: Sustained. He can testify where he did look, what he found, and where he found it came from.

Mr. Doepker: Your Honor, that is just it. We have to do that by a process of elimination. There wasn't any way on earth to go and point a finger at exactly where it came from, but by a process of elimination and evidence——

The Court: Yes, that is very simple when you say, "I found it here," and why. It is very simple.

Mr. Angland: If the situation is as counsel stated, the doctor can't testify where it came from.

The Court: If the doctor doesn't know where it came from, but has an opinion as to where it came from, the doctor can testify as to that and give his reasons for his opinion.

Q. Doctor, in connection with this question, eliminate the [189] lungs and heart, in which you say there was no reasonable probability as a source, where would that leave as the diagnosed source, what part of the body?

Mr. Angland: I will object to that——

The Court: Where was the source of the embolus? Isn't it that simple?

Q. All right, we will ask it that way. What was the source of the embolus, in your opinion?

A. I can't state where the embolus arose; it is

(Testimony of Robert Scott Stokoe.)

impossible to state where it arose by anything short of an autopsy; I couldn't say where it arose. When we do eliminate the heart and we do eliminate the lungs, we can simply give an opinion that it may have arisen from the wall of the aorta as the only other remaining source, providing we also rule out a patent foramen ovale, which we previously discussed, through which an embolus could conceivably get from the venous side of the body to the arterial side. It is extremely doubtful, and it is extremely rare that an embolus gets from the venous side to the arterial side through this opening; so, if we rule out that as well, we know that it had to come from the arterial side, from the lung, the heart, or the aorta, as the only remaining sources. To the best of our ability we have ruled out the lung, to the best of our ability we have ruled out the heart. I still cannot say that this came from the aorta. It is reasonable that it may have come from the [190] aorta.

Q. I don't know whether I have asked you previously, Doctor, but will you explain the effect of an origin and development of an embolus?

Mr. Angland: Object to that as repetition, your Honor, I think that has already been asked.

The Court: I think so, I think you went into that, didn't you, Doctor?

Mr. Angland: Pages 25 and 26 of the transcript of yesterday's testimony of the doctor. I think the question was, "**Will you explain to the Court, Doctor, the known sources of blood clots that are**

(Testimony of Robert Scott Stokoe.)

known to your knowledge at this time, from your reading or experience, to the medical science?"

Mr. Doepker: This is directed to a specific thing, your Honor, that is, the formation of and development from the formation. I am trying to give your Honor all the medical assistance I can.

The Court: That is fine, if we don't already have it, but there is no use taking up the time if he has testified to it. If you don't think he has, proceed, however, because we are just wasting time talking about it. Go ahead, answer the question, Doctor.

A. An embolus comes from a thrombus, the thrombus being a clot, or later on, the residuals of the clot inside the lumen of the vessel. This thrombus itself, or its end product can break off and form an embolus, or a new thrombus can form over [191] the old thrombus, and the new thrombus break off and become the embolus.

Q. Now, then, Doctor, in your opinion, based upon your analysis of this case, will you say whether or not you found or believe that there was a thrombus that changed from a thrombus to an embolus in this case?

Mr. Angland: Just a minute, your Honor, I will object to that. The doctor has already testified that the embolus does form from a thrombus. He has stated that the plaintiff had an embolus. I will object to any questioning along that line, from his study of the case, because we don't know at this time how extensive the doctor's study of the case

(Testimony of Robert Scott Stokoe.)

has been, or that it covered all the facts presented in the case, not solely the medical evidence.

The Court: We don't know what the doctor is basing his opinion on. If you asked him to base his opinion on his testimony as to what he has related as to his diagnosis and treatment of the patient.

Mr. Doepker: That is all he can testify to is what he himself knows from his diagnosis.

The Court: Diagnosis and treatment of the patient, yes. Proceed and answer the question on that basis.

A. Will you restate the question?

(Question read back by Reporter.)

A. Yes. [192]

Q. And I now ask you to consider the effect of a serious history of nephritis that commenced with the hospitalization of Mr. Hennessey on June 25, 1934, diagnosed as acute glomerulonephritis, and from which the plaintiff was confined in the hospital at Butte, Montana, from June 25th, 1934, until October 20th, 1934, and with the subsequent history of their being present in the plaintiff evidences of nephritis which caused his rejection from the armed services, and that the rejection occurred in the year 1942, that degree and persistency of a nephritic condition, would that, in your opinion, with reasonable probability, have affected at all the walls of the blood vessels?

A. With the seriousness of his illness, there is

(Testimony of Robert Scott Stokoe.)

a reasonable probability of a minimal effect to the walls of his blood vessels of his body.

Q. If a person who has had that history of nephritis is struck upon the shoulder and neck by a man weighing between 115 and 130 pounds falling from a ceiling in a room that was 12 feet high while he was standing at a lavatory, bending over approximately to a 30-degree angle, and Hennessey being six feet and one-quarter inch high, would you say that an accident of that kind would cause extra pressure to be built up in the aorta?

A. Extra pressure would be built up in the aorta, yes, momentarily only. [193]

Q. Now, then, Doctor, do you have an opinion as to the reasonable probability of where this plaintiff may have had the origin of the embolus which you have testified to here yesterday in your testimony?

Mr. Angland: Just a minute; to which we will object, your Honor, it is repetitious; it is an attempt, I would almost say, to impeach his own witness. The doctor has already testified it is an embolus and to state where the embolus arose, in his opinion, it is impossible to state that.

The Court: I will overrule the objection. Answer the question.

A. I can't say where it arose. I can give a possibility with the aorta, or the lining of the aorta probably, there being, as stated, an increase in pressure as you have asked being present momentarily, it is conceivable that a tear, either minimal or

(Testimony of Robert Scott Stokoe.)

large, could happen in the wall of the aorta. Did it happen? I don't know; it is possible that it did happen.

Q. Is there, to your knowledge, any way, or any method that a physician can definitely state the source of a thrombus or where a thrombus forms inside of a blood vessel?

A. Under the conditions in this specific case, no.

Mr. Doepker: You may inquire. [194]

Cross-Examination

By Mr. Angland:

Q. Doctor, following through what you have stated just a minute ago, the momentary building of the blood pressure by being struck could affect the walls of the aorta. If an embolus was formed at that time, or a blood clot formed, it certainly couldn't possibly float around in the blood vessels for a period of several months, could it, Doctor?

A. Oh, no, the thrombus would be formed at that time, not the embolus, and it would either heal where it was or remain there for the future.

Q. It would attach itself to the wall of the aorta?

A. It actually begins on the wall and grows outward to a certain extent, dependent upon the rush of the bloodstream, that is, the speed at which it moves, and the ability of the patient's blood to clot, things of that nature.

Mr. Angland: Your Honor, under the present

(Testimony of Robert Scott Stokoe.)

state of the record in this case, I think I am unduly delaying the Court and counsel to cross-examine the doctor at this time. If there isn't more proof submitted, I think that I would be unduly delaying the Court and counsel.

The Court: That is for you to decide.

Mr. Doepker: We expect to put on additional witnesses, your Honor.

The Court: You probably won't be able to re-examine this witness at a later date. He ought to be examined here some time. [195]

Mr. Doepker: We are going to put on another medical witness, your Honor.

Q. (By Mr. Angland): Doctor, when this embolus formed in Mr. Hennessey on January 7th, 1950, did you consult with other physicians in the City of Billings? A. I did.

Q. Did you have a large consultation, or a small one; I mean, was there a number of doctors?

A. May I answer that in my own words?

Q. I would appreciate it if you would.

A. Specifically, there was the same day a consultation with a single physician, surgeon, who concurred in the diagnosis; there was at a later date—the case was brought up at a later date at a staff conference where there were many doctors present, I would judge 40.

Q. And Doctor, by reason of those conferences and your study of this unusual case—you have given it a good deal of consideration, haven't you?

A. Yes, sir.

(Testimony of Robert Scott Stokoe.)

Q. And a good deal of study, Doctor?

A. Yes, sir.

Q. And you cannot state definitely where that embolus arose in Mr. Hennessey's body, is that true?

A. That is true.

Q. It is possible to have had an injury when he was a child [196] and have the thrombus form somewhere, and that might have broken loose, is that true?

A. Before his nephritis, the chances of that would be quite minimal, I believe, unless it was a very, very severe blow. After his nephritis, that possibility does exist by reason of changes I believe have come about in the walls of his blood vessels, of his aorta, specifically.

Mr. Angland: Lest I forget, at this time, we should like to offer in evidence the balance of Defendant's Exhibit Number 2, that is, the portion of it not offered by plaintiff, and the portion of Defendant's Exhibit Number 1 not offered by the plaintiff, that part consisting of what has been identified, I believe, as 1-B and 1-C. I believe 1-A is the one that is offered and admitted.

The Court: Any objection?

Mr. Doepker: We don't have any objection to a portion of it, your Honor, but I do object to the portion of Defendant's Exhibit 1 that has been denominated as 1-B and 1-C, on the ground and for the reason that it is improper cross-examination and no foundation having been laid sufficient for the introduction of these subsequent exhibits, your

(Testimony of Robert Scott Stokoe.)

Honor, 1-B and 1-C being exhibits that came into the testimony yesterday subsequent to this condition that the doctor has testified to in the Deaconess Hospital. They are matters that occurred later, which might be a part of the defendant's case [197] in chief.

The Court: Well, it may well be that those matters that occurred later don't go to prove the cause of the embolism in this case or anything of that nature, but I suppose some time in the case we are going to get around to proving damages.

Mr. Doepker: That's right, your Honor.

The Court: They will be admissible then. For the time being I will sustain your objection, but I don't see what we are wasting time for arguing about it, because they are going to get in.

Mr. Doepker: Your Honor, we have a hypothetical question to deal with on those.

Mr. Angland: There is a rule where one party has offered a portion of an exhibit, the balance is admissible. These two exhibits were identified by the defendant as Defendant's Exhibits 1 and 2.

The Court: Yes, but they are obviously not part of the same document; they are three different histories kept by the hospital in one jacket.

Mr. Angland: That may be true. Now, further, the plaintiff has already testified, your Honor, concerning his condition right up to the present time. He has already gone into that, may it please the Court. The doctor was given an opportunity yesterday to review all of the medical records so he

(Testimony of Robert Scott Stokoe.)

might be in a position to testify yesterday afternoon. [198]

Mr. Doepker: To save time, we will withdraw our objection, your Honor.

The Court: Very well, admitted. Proceed.

(That portion of Defendant's Exhibit 2 designated as Nurses' Record of Joseph P. Hennessey at Deaconess Hospital; Defendant's Exhibit 1-B, being St. Vincent's Hospital Record of Joseph P. Hennessey, commencing 9-7-51, and Defendant's Exhibit 1-C, being St. Vincent's Hospital Record of Joseph P. Hennessey, commencing 11-14-50, were all here received in evidence. It is impossible to reproduce said exhibits in this transcript, and the same are on file in the office of the Clerk of the Court in this cause.)

Q. Now, Doctor, did you have an opportunity yesterday noon to study the record and history of the record of St. James Hospital and the history of nephritis? A. I have.

Mr. Angland: At this time, then, your Honor, we offer in evidence Defendant's proposed Exhibit 5.

The Court: Any objection?

Mr. Doepker: Is that the St. James Hospital record, your Honor?

Mr. Angland: Yes.

Mr. Doepker: No objection.

The Court: Admitted.

(Testimony of Robert Scott Stokoe.)

(Defendant's Exhibit 5, being St. James Hospital Record of Joseph P. Hennessey, was here received in evidence. It is impossible to reproduce said exhibit in this transcript, and the same is on file in the office of the Clerk of the Court in this cause.)

Q. Doctor, have you been acquainted with Mr. Hennessey since [199] his release, or have you treated him professionally since his release from the hospital, I believe it was the latter part of March, 1950? A. I have.

Q. Have you treated him from time to time?

A. I have.

Q. You have also examined the hospital record of Mr. Hennessey since that time, haven't you?

A. I have.

Q. Has Mr. Hennessey given himself the care that you would say had contributed toward his recovery from the condition that he suffered from in the hospital in January, 1950, or has his treatment of himself been such that he has aggravated the condition?

A. The damage was done in the hospital with the embolus and subsequent course of events while hospitalized. I would believe it would be impossible for him to make himself worse after that time; either there would be a small, a minimal recovery, or a great recovery.

Q. What I am getting at, Doctor, is this: Supposing that doctor examined Mr. Hennessey on De-

(Testimony of Robert Scott Stokoe.)

cember 26th of 1952, and January 10, 1953, to determine his present physical condition. Do you believe that by reason of the hospitalization which Mr. Hennessey received in 1951, as shown in Defendant's Exhibit 1-B, that Mr. Hennessey's condition might be found to [200] be worse than it was, say, on the day he was released from the hospital by you in 1950?

A. Found his condition to be worse?

Q. Yes. Would that hospitalization have aggravated his present physical condition, is it possible?

A. With regards to his leg and with regards to the reason that he was in the hospital, no, not the concussion.

Q. Not with regard to his leg, but with regard to his general physical condition?

A. It may have slowed improvement.

Q. It may have hampered improvement and recovery from the condition of the leg?

A. Yes, indirectly.

Q. The injury he received at that time, could that have affected his general physical condition as of now?

A. Not as of now, no.

Q. You think he has fully recovered from the concussion?

A. Yes, I believe so.

Q. You would say that the only thing that that did, then, was delayed the recovery of the condition in the leg?

A. A temporary delay, that is correct.

Q. Doctor, directing your attention to Plain-

(Testimony of Robert Scott Stokoe.)

tiff's Exhibit 1-C, I believe you were the plaintiff's doctor on that occasion, weren't you?

A. I was. [201]

Q. When was that hospitalization?

A. November 14th, 1950.

Q. That was the fall after you had released him with this condition in his leg?

A. That is correct.

Q. What was Mr. Hennessey's condition when you admitted him to the hospital?

A. Do you wish the diagnosis?

Q. Yes.

A. The diagnosis was alcoholic poisoning.

Q. Had you observed Mr. Hennessey from time to time between the date he was released in March, 1950, and his admission in November, 1950?

A. I had.

Q. Had Mr. Hennessey been doing anything you considered was aggravating his condition, his general health?

A. There was neglect of treatment, yes, during that time, the same reason that he was hospitalized causing the neglect of treatment, I believe.

Q. To your knowledge, the excessive use of alcohol between the latter part of March, 1950, when you released him from the hospital, and the time you admitted him to the hospital in November, 1950, was causing a neglect of treatment?

A. That is correct.

Q. Is that all it amounts to, or was the condition such that [202] he was preventing nature from

(Testimony of Robert Scott Stokoe.)

rendering what aid nature might render toward recovery? A. That is true.

Q. When that occurs over a period of several months, Doctor, is that probably going to prevent or make it more difficult for nature to cause his complete recovery, or is it not?

A. That is true.

Q. Just tell us how that affects the condition, Doctor, or the recovery from the condition?

A. Accompanying that condition there is a general malnutrition due to the lack of proper food and proper vitamins. Your protein and various food elements, and your minerals and vitamins are required for tissue repair, that is, for new tissue to be built. Excessive use of alcohol will cause—is nearly always, we will say, accompanied by lack of proper diet, which would naturally impede recovery from any condition.

Q. Rather than recovery, you may get additional deterioration, isn't that the situation, Doctor, from excessive use of alcohol?

Mr. Doepker: Just a minute, your Honor, we object to this line of cross-examination on the ground and for the reason it is calling for speculation.

Mr. Angland: I am trying to find out, your Honor, what his present condition is, and whether he has aggravated his damage. [203]

The Court: The doctor has testified as to Mr. Hennessey's health and condition right up to the present time. Didn't he testify with reference to

(Testimony of Robert Scott Stokoe.)

his general health and general condition today, or just right up to the time of trial? Now, surely, you can cross-examine him in any light, in any way that will throw any light upon his condition and what it results from, because, after all, we just don't close our eyes to what we are trying here. We have got to find out not only what happened in the past, but what our damages are. Now, if damages resulted from something different than the fault of the defendant, why, then, that is an important part in the case, and I take it that is what we are looking into on this cross-examination.

Mr. Angland: That is what I have in mind, your Honor.

The Court: Objection is overruled.

A. On his general physical condition, you will get a deterioration throughout the body.

Q. That is what I meant. Bearing in mind the malnutrition you spoke of from the excessive use of alcohol, so that you get a general breaking down of the health, rather than a recovery of the limb that needed particular treatment, isn't that right, you get a breaking down of the general health?

A. That is correct.

Q. And that, of course, affects the member of the body that has been injured? [204]

A. That is correct.

Q. Now, Doctor, how long did you hospitalize Mr. Hennessey in November, 1950?

A. One week, November 14th to November 21st.

Q. For one week. Doctor, did you continue to

(Testimony of Robert Scott Stokoe.)

treat Mr. Hennessey after his release from the hospital on November 21st, 1950, did he continue to be your patient? A. Yes, he did.

Q. Now, with respect to caring for himself, particularly as to his continuing the excessive use of alcohol, or not continuing it, Doctor, what do you know about that situation?

A. Up to January of—the month of January, one year ago.

Q. 1952?

A. There were periods of excessive use of alcohol, followed by periods of abstention.

Q. How often, if you know, did these periods of excessive use of alcohol occur?

A. To the best of my knowledge, I can only answer that as frequent.

Q. As what?

A. I cannot be specific as to the number of times.

Q. Give us your best estimate.

A. Since January of one year ago, I am satisfied there has been total abstention.

Q. I mean between the release from the hospital on November [205] 21st, 1950, and January, 1952, what was the situation?

A. As I have stated.

Q. There were periods of excessive use and periods of abstention. How often did these periods of excessive use occur and for what length of time, if you know, accurately, if you can, if not, give us your best estimate, Doctor?

(Testimony of Robert Scott Stokoe.)

A. My best estimate would be probably periods of a couple of months, possibly two or two and a half months duration, it would be roughly in there, of excessive use, followed by a week to possibly a month and a half to two months abstention.

Q. Now, Doctor, then, from the time that you released Mr. Hennessey from the hospital in March of 1950, until January of 1952, did you find a steady improvement in his general health, or a deterioration, or just what was the situation?

A. I would say that his general health remained stationary during that period. There was no improvement. Because he had been so ill in the hospital, if there was retardation—not retardation, but if there was a further injury to his general health, I would estimate that he, undoubtedly, with the use of alcohol, his general health did go down hill somewhat, but then reached a stationary point. In other words, he was not severely worse in January of 1952.

Q. He was not severely worse, but the body had not been given the nourishment that permitted more speedy recovery of the left leg, is that true, or is it not? [206]

A. That is true.

Q. Had he given himself the care that you recommended, and given nature an opportunity to cure, you would have, or would anticipate a more speedy recovery, is that right, Doctor?

A. I never anticipated a complete recovery.

Q. No, I don't mean that. What I am trying to get at, Doctor, is this: Was the excessive use of

(Testimony of Robert Scott Stokoe.)

alcohol causing an aggravation, was it maintaining the condition of the leg in a static condition, so to speak, or was it improving the condition of the leg?

A. Because of periods of abstention and physiotherapy received, his leg did improve. In answer to your question, it did not improve as far as I think it would or may have.

Q. If he had abstained from the use of alcohol?

A. That is true.

The Court: Doctor, you have talked about infection being a source of emboli, is that right?

A. Yes, sir.

The Court: And you were asked about the infection that the patient suffered in the month of January, 1950, in the lung, in the chest area, or respiratory infection; wasn't there such an infection at that time?

A. There was at that time.

The Court: In your further testimony you said in your opinion no emboli came as a result of that infection, is that right? [207]

Mr. Angland: He said he didn't know.

A. Yes.

The Court: Let's find out, that is what I want to find out. What is the situation on that, that is what I want to know?

A. We know when there is any infectious going on in the body that in all of our blood streams there are bacteria present for a short period of time, and for which the various elements of the blood are there to combat that. It was not felt by this group

(Testimony of Robert Scott Stokoe.)

of physicians, nor by myself, that his infection was the source of the embolus.

The Court: Why?

A. Before infection will play a part in causing an embolus or a thrombus, there must be some type of damage within the walls of the blood vessels, within the lining, I should say, so that it is conceivable to me that were there a thrombus, that is a projection outward inside the blood vessel, were there a thrombus present, it is conceivable that bacteria could lodge in that thrombus and further propagate, further increase the thrombus, but, as I have said, you need an injury in the lining due to infection to have the eroding get from the tiny blood vessels into the lining, and it was not felt, as I say, by myself—we have not seen where this infection had been severe enough to cause it alone.

The Court: Is that the answer, then, the infection in this case was not severe enough to cause a thrombus to form from [208] which the emboli resulted?

A. We felt that way, sir.

The Court: Tell me what kind of infection is necessary to do that?

A. In general, one which is prolonged; and one which is severe is one in which the elements of the blood, plus what medication we can use, will not readily clear the infection, such as a long standing severe infection in the body, a brain abscess.

The Court: How long standing and severe does the infection have to be? With reference to this

(Testimony of Robert Scott Stokoe.)

alcohol causing an aggravation, was it maintaining the condition of the leg in a static condition, so to speak, or was it improving the condition of the leg?

A. Because of periods of abstention and physiotherapy received, his leg did improve. In answer to your question, it did not improve as far as I think it would or may have.

Q. If he had abstained from the use of alcohol?

A. That is true.

The Court: Doctor, you have talked about infection being a source of emboli, is that right?

A. Yes, sir.

The Court: And you were asked about the infection that the patient suffered in the month of January, 1950, in the lung, in the chest area, or respiratory infection; wasn't there such an infection at that time?

A. There was at that time.

The Court: In your further testimony you said in your opinion no emboli came as a result of that infection, is that right? [207]

Mr. Angland: He said he didn't know.

A. Yes.

The Court: Let's find out, that is what I want to find out. What is the situation on that, that is what I want to know?

A. We know when there is any infectious going on in the body that in all of our blood streams there are bacteria present for a short period of time, and for which the various elements of the blood are there to combat that. It was not felt by this group

(Testimony of Robert Scott Stokoe.)

of physicians, nor by myself, that his infection was the source of the embolus.

The Court: Why?

A. Before infection will play a part in causing an embolus or a thrombus, there must be some type of damage within the walls of the blood vessels, within the lining, I should say, so that it is conceivable to me that were there a thrombus, that is a projection outward inside the blood vessel, were there a thrombus present, it is conceivable that bacteria could lodge in that thrombus and further propagate, further increase the thrombus, but, as I have said, you need an injury in the lining due to infection to have the eroding get from the tiny blood vessels into the lining, and it was not felt, as I say, by myself—we have not seen where this infection had been severe enough to cause it alone.

The Court: Is that the answer, then, the infection in this case was not severe enough to cause a thrombus to form from [208] which the emboli resulted?

A. We felt that way, sir.

The Court: Tell me what kind of infection is necessary to do that?

A. In general, one which is prolonged; and one which is severe is one in which the elements of the blood, plus what medication we can use, will not readily clear the infection, such as a long standing severe infection in the body, a brain abscess.

The Court: How long standing and severe does the infection have to be? With reference to this

(Testimony of Robert Scott Stokoe.)

case we have got, didn't you have the patient in the hospital a month previous, about a month previous, with the same general infection or type of infection?

A. That is true. It was felt—that is a very difficult question to answer. I can give you the opinion that it was felt that were the infection the source of embolus, positive X-ray findings would have been found at that time, sir. Does that help; and they were not found.

The Court: X-ray pictures at the time shortly after the embolism hit the knee, is that right?

A. Yes, that is true. There were X-rays on the previous hospitalization, if you remember, at St. Vincent's, that were read as minimal changes in the lung, to which no significance was given, then, this X-ray was taken as we were searching [209] for the source of this.

The Court: Where?

A. This isn't the Deaconess record, I am sorry. They were taken in the Deaconess Hospital shortly afterward. I have taken several X-rays of Mr. Hennessey's chest, one of which I sent to Dr. Terrill in Galen for review, and he found no——

The Court: In order for a medical man to say that an emboli resulted from a respiratory infection, there would have to be something show in an X-ray, then, in order for a doctor to say that is where it came from?

A. That was our belief.

(Testimony of Robert Scott Stokoe.)

The Court: Is that medical science, is that what they all say, or is there some argument about it?

A. I heard no argument about it; I have to go by inference.

The Court: So far as you know, there would have to be a showing in an X-ray of damage to the lung cavity for anyone to say that an emboli did result from that infection? A. Yes, sir.

The Court: While it takes that to say it did result, does it take that to say it may probably have resulted, or could have resulted, is there anything to that? In other words, while it may take positive showings in X-rays to say, "Yes, it did result from that infection," does the absence of positive showings prove or establish to the satisfaction of medical science that the respiratory infection was not the [210] source of the emboli?

A. You would have to have—I think I can answer that for you satisfactorily. In order to have an embolus large enough to lodge in the bifurcation of the aorta, in other words, it has to lay over the top, so to speak, in order for it to be that large, I believe, and at this meeting it was also believed—I should not say that, I can't specifically—but I do believe, nevertheless, that the embolus would have to come from a fairly large vessel. Were that vessel to be in the lung, there would have to be positive X-ray findings before we could say it came from there. That is my opinion. Does that help?

The Court: Yes. Any further questions.

(Testimony of Robert Scott Stokoe.)

The Witness: The X-rays of the chest were taken January 3rd and February 19th, 1950.

Q. (By Mr. Angland): Those X-rays you took, Doctor, were limited to the lungs and the wall of the aorta, is that right?

A. Yes, from the diaphragm up, yes, sir.

(10-minute recess.)

Q. Doctor, this respiratory infection, which you were speaking of a few minutes ago, was the condition that you found when you hospitalized Mr. Hennessey in the fall of 1949, is that right?

A. Yes, sir.

Q. And that was the only condition you found Mr. Hennessey was suffering from at that time? Do you want to look at the [211] chart?

A. May I refer to it, please, 1-A?

Q. In November of 1949?

A. That was not all. At that time on entrance I also thought that he had some liver damage which I could not substantiate with tests, even though it was apparent that his liver was large and tender. I also found a mild hypertension.

Q. What do you mean by mild hypertension, Doctor?

A. That his pressure was elevated above normal.

Q. Blood pressure? A. Yes, sir.

Q. Did you find a cause of that?

A. I did not find the cause of it. His hypertension has varied, as I believe his charts will show, which could be at times the result of alcoholism. It

(Testimony of Robert Scott Stokoe.)

could be also the results of the residuals of nephritis.

Q. Doctor, when you admitted Mr. Hennessey on January 3rd, 1950, when you admitted him to the hospital again, you found that this respiratory infection, as you call it, the upper respiratory infection, had not completely cured from the time he had been in the hospital in November of 1949, is that right? A. That's right, that is correct.

Q. There was still respiratory infection present?

A. He had a persistence of coughing.

Q. Did you still find the liver tender? [212]

A. I did not.

Q. That condition seemed to have cured?

A. It apparently had cured.

The Court: Doctor, in your consideration of the care and treatment and diagnosis of the case with particular reference to the embolus, did you consider the history of the infection as the result of the nephritis?

A. Did I consider the history of the infection as the result of the nephritis?

The Court: Did you consider the nephritis, which is an infection, is that not so?

A. The cause of nephritis today is not known.

The Court: What is nephritis?

A. It is an inflammation of the kidney.

The Court: Is that an infection?

A. It is not a bacterial infection, no.

The Court: Is it the kind of infection that could build up a thrombus or cause a thrombus?

(Testimony of Robert Scott Stokoe.)

A. In itself, no, but through changes in other vessels, it can make the vessels less elastic and make them a potential source for something else to happen, or over a long period of years to change the vessel walls to form arteriosclerotic plaques along the course of the major vessels.

The Court: Did you make any examination to see if such condition existed? [213]

A. It is impossible, with the exception it will sometimes show up on X-ray. Either X-rays were not made, or if they were, whatever chest X-rays and lumbar spine were taken—that's right, on the Deaconess records there were pictures taken, and were there arteriosclerotic plaques present with calcium in them, they will then show up on the X-ray, provided the calcium is present, which does take a considerable period of time, the exact number of years I can't give you.

The Court: Do they exist without calcium being present?

A. For a period of years, yes.

Q. (By Mr. Angland): You don't know whether the calcium was present in the case of Mr. Hennessey, or whether it wasn't?

A. I doubt that there was in the lumbar spine. X-rays were taken, and I don't recall, I am quite certain there is no mention made of that being present.

Q. You did find, didn't you, I believe you stated, two old fractured transverse processes on the left?

A. That was my impression at the time. I have

(Testimony of Robert Scott Stokoe.)

not since reviewed the films. The radiologist did not believe they existed, and I took his word for it because other shadows can overlies those transverse processes and give you a false impression of a fracture. As I remember, I read the films when they were wet and they are more difficult to read unless they are dry, so I put no significance on my findings.

Q. And, Doctor, I am trying to find it in here, and I can't [214] find it immediately, but I think you said there were residuals present as far as the nephritis is concerned, the history of nephritis of Mr. Hennessey?

A. I believe there were, yes, sir.

Q. There could have been a thrombus formed from those residuals, is that right?

A. By themselves—I mean by the residuals that I believe were present by themselves without other factors, I don't believe so. That is strictly a belief.

Q. If other factors you are speaking of are present, they could form a thrombus?

A. That is possible.

Q. It is possible? A. Very possible.

Q. There are just many possibilities for forming a thrombus, aren't there?

A. That is correct.

Q. If you got out one of your medical books, I suppose you could list quite a number of possibilities for the forming of thrombi?

A. I got out some books, and I think we have covered just about anything that I found.

(Testimony of Robert Scott Stokoe.)

Q. You have covered most of them since you have been on the stand, have you?

A. I believe I have. [215]

Mr. Angland: No further cross-examination.

The Court: I would like to have you examine the witness further along the line—counsel on direct examination inquired as to the injury, the falling on the shoulder and the neck of the defendant. There is some evidence that a couple of years prior to that there was another injury to the shoulder. I would like to have you examine the witness with reference to that.

Mr. Angland: You are referring, I believe, your Honor, to the automobile accident?

The Court: The automobile accident.

Mr. Angland: I thought it was Dr. Soltero that testified about having treated him for both those injuries.

The Court: This witness was asked with reference to an emboli resulting from a person falling 12 feet and striking him on the shoulder and back. Isn't there some testimony with reference to that?

Mr. Angland: I thought the Court sustained an objection to that.

Mr. Doepker: No, he has testified about the pressure causing a tear in the wall.

The Court: Yes.

Q. (By Mr. Angland): I think I inquired of you, Doctor, that it is possible from a fall of that kind such as you were inquired of, concerning a fall of that kind, Doctor, it is possible [216] to get

(Testimony of Robert Scott Stokoe.)

a tearing that might cause a thrombus, is that right? A. That is correct.

Q. You wouldn't have an embolus immediately, as I think I have already asked you, the embolus just wouldn't float around in the blood stream from June 2nd, 1949, until January 7th, 1950, that is an impossibility, isn't it? A. That is correct.

Q. You have stated you couldn't have a thrombus form in the right shoulder and go down through the heart into the lungs, back into the other side of the heart and down the aorta?

A. That is correct.

Q. You have stated that that just isn't possible, isn't that right, Doctor?

A. Not through the lungs by the channel that you have stated. The lungs will filter out such an embolus.

Q. Isn't that what the course of the blood would have to be, Doctor?

A. Unless there were an opening from the right side of the heart to the left side of the heart.

Q. Does Mr. Hennessey have such an opening?

A. Not to my knowledge, no.

Q. That is an unusual condition, is it?

A. I think when we looked that up we found there was some type of an opening in one out of 20 autopsies, but to the point of being clinically significant, it was much more rare than that. [217]

Q. I think you have already testified you found no heart condition so far as Mr. Hennessey was concerned? A. That is correct, sir.

(Testimony of Robert Scott Stokoe.)

Q. Is it possible to have that opening without a heart condition? A. To some degree, yes.

Q. I think you further stated that in your opinion the embolus in this case was too large to have gone through that course of the body from the right shoulder down to the saddle, as you call it, in the aorta? A. I believe so.

Q. So, that in your opinion, Doctor, there was no thrombus formed on the right shoulder that caused this embolus?

A. Not causing the embolus, no, sir.

Q. It just couldn't have happened, isn't that the situation, in a normal human being, it couldn't happen, is that it, Doctor? A. That is correct.

Mr. Angland: Does that cover what your Honor had in mind?

The Court: I didn't have anything in mind.

Mr. Angland: What you suggested. I believe that is all.

Redirect Examination

By Mr. Doecker:

Q. Doctor, you have been asked concerning a subsequent [218] history of Mr. Hennessey which related to the use of alcoholic liquor. In that respect do you recall that during the time that Mr. Hennessey was confined in the hospital whether or not, because of the great amount of drugs that were administered to him, that he, himself, requested they be not used further on the ground they might be habit forming, that he, himself, discontinued to

(Testimony of Robert Scott Stokoe.)

take the narcotic drugs in the nature of morphine and pain-killing drugs?

A. With respect to morphine, that's right.

Q. Because of the excruciating pain, did he not substitute whiskey instead of these narcotic drugs?

Mr. Angland: I will object to that as leading and suggestive, your Honor.

The Court: Overruled, you may answer.

A. He may have done that, yes.

Q. And with respect to the damage that was done in the hospital there, this that you have related to the Court, do you feel that that condition that resulted from the embolus and the effects of it could have been permanently cured so that he would be free from pain?

A. So that he would be totally free from pain at all times, I don't believe so.

Q. And—pardon me, I didn't mean to interrupt you, Doctor.

A. I was just going to try to help in that. I feel now, and I felt then, that, as I have stated before here, I think there could have been more improvement than there has been. I would not anticipate that there would be a complete cure in his leg to the point that he could partake of any heavy exercise, so to speak, such as hunting or long walking, without getting into further pain, and I believe that his leg would be always limited to some ability, to some point, I should say.

Q. And that is regardless of any subsequent history of partaking of alcoholic liquor, he would still, in your opinion, if he had not indulged to the extent

(Testimony of Robert Scott Stokoe.)

that has been shown here—would you say whether or not, in your opinion, that he would still have difficulty in walking and climbing stairs, for instance, to the courthouse here in Billings, and things of that kind?

A. Exactly what further limitations he would have had, to define it to a fine specific point, I believe, is impossible. I can't really define it any more than I have generally. As I say, I don't believe he would be able to hunt. Whether he would be able to walk from his office to here and up these stairs, I can't say.

Q. I neglected to ask the doctor's attention to a statement. Doctor, did you prepare an itemized statement of your professional care in the Deaconess Hospital from January 3rd through March 12th, and continuing on until the 10th of May, 1950?

A. I did. [220]

Mr. Angland: When did that bill commence?

Mr. Doepker: January 3rd.

Q. Showing you Plaintiff's Exhibit 10 for identification, Doctor, is that the statement you have rendered for your services?

A. That is the statement.

Q. And for those services—was that the reasonable value of the services which you performed for Mr. Hennessey?

A. I believe it was reasonable.

Mr. Doepker: You may inquire.

The Court: Do you wish to offer that?

Mr. Doepker: Yes, your Honor.

Mr. Angland: No objection.

PLAINTIFF'S EXHIBIT 10

"STATEMENT OF YOUR ACCOUNT

Itemized Statement Furnished on Request

Date	Services	Debits	Balance
1/ 3/50			
to			
3/12/50—Prof. Care, Deaconess Hospital.....		\$250.00	\$250.00
3/16/50—House Call		5.00	255.00
3/23/50—Office Call		3.00	258.00
4/ 1/50—X-ray Ankle		7.50	265.50
4/24/50—I.V. Inj.		5.00	270.50
5/ 4/50—Office Call		3.00	273.50
5/ 5/50—Office Call		3.00	276.50
5/10/50—Chest X-ray		10.00	286.50

Accounts Due and Payable by 10th of Month Following Service Unless Arrangements for Terms and Credit Are Made With Credit Dept.
This Statement Includes Your Account to the 26th of the Month Only.

In Account With
Soltero Medical & Surgical Group
315 North Broadway
Billings, Montana

Joe Hennessey." [221]

Mr. Doepker: That is all. May the doctor be permanently excused? He has got a trip to take.

Mr. Angland: Yes, as far as I am concerned.

C. H. HORST

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Doepker:

Q. Will you please tell the Court your name?

A. My name is Dr. C. H. Horst.

(Testimony of C. H. Horst.)

Q. Where do you reside, Doctor?

A. I come from Butte, Montana.

Q. And have you resided in Butte, Montana, for some time?

A. Yes, pretty near all my life.

Q. How long have you been following your occupation in Butte, Montana?

A. Oh, about 50 years.

Q. What is that occupation you are following?

A. I am a physician and surgeon.

Q. You are a graduate, Doctor, of what School of Medicine?

A. Johns Hopkins Medical School. [245]

Q. After you attended, and while you were attending Johns Hopkins Medical School, did you study the complete course of study that was prescribed by that institution for graduation in the profession of medicine and surgery?

Mr. Angland: I will admit the doctor's qualifications as a physician and surgeon, that he is regularly licensed and practicing his profession in the State of Montana.

Mr. Doepker: Thank you. Doctor, I would like to inquire some about your experience subsequent to your graduation from the University. Will you just relate briefly your experience in the field that you have chosen as your life's work?

A. After I graduated, I was a year in the Johns Hopkins Hospital as House Officer, I guess you would call it House Officer, it was an intern. Then I came to Butte in 1903 and took the examination;

(Testimony of C. H. Horst.)

then I fussed around and went down to the Montana State Insane Asylum for a year; then I got married.

The Court: Before or after you went to the Insane Asylum?

A. When I got down there; then I went to Butte again, and then I had charge of the City Hospital in the City Jail, in the City Hall; I had that for five years. We were very active then in Butte; everybody was taking poison or shooting each other, so I saw quite a good deal of cases; and then I went back to general work. I'll tell you in 1900 I went down to Boston and I took a course there in pathology under a very famous doctor—I have forgotten his name right now—and then [246] I have been to New York frequently to see the good surgeons operate, and Mayo's innumerable times; I went there to look on with patients. I have been around about 50 years, and here I am.

Q. In the course of your experience as a physician, did you have occasion to consider the blood vessels of human beings, and to study their form and substance and so on? A. Yes, sir.

Q. And have you read, and do you make it a practice of reading on various subjects connected with your profession, as a part of your work, I mean? A. Yes, sir.

Q. Have you studied the question of thrombosis in blood vessels?

A. Yes, I have had quite a great deal of experience.

(Testimony of C. H. Horst.)

Q. Also have you studied the question of when the thrombus dislodges and goes into the blood stream and changes from a thrombus to an embolus, have you studied those things?

A. Yes, you have to know about those things if you study medicine.

Q. All right, then, going on from your experience, I want to inquire whether you, in the course of your practice, had occasion to meet and have the plaintiff in this case consult you with reference to a complete physical examination and study of his case? [247]

A. Yes, sir.

Q. And in response to that meeting with the plaintiff, did you make a complete physical examination of him, and also of his case?

A. Yes, sir.

Q. In doing that, what did you have available, what did you have available to study the facts of his case?

A. Well, first of all, I had the patient. Then I started in on him. I took his history, and the history consisted of carrying Mr. Hennessey from the time he began to get sick until he reached this present state, and I went into his family history and took his own history and reviewed the history in relation to accidents that he had sustained; then I made a careful examination of his history regarding this man that fell on him; then I made my own examination of him, and then I made my conclusions on this case.

Q. Did you have the benefit during the course

(Testimony of C. H. Horst.)

of your study of his case, Doctor, of the Defendant's Exhibit Number 2? A. Yes, sir.

Q. Did you have that available to you during the course of your examination and study of this case, and during your examination of the plaintiff?

A. Yes, sir.

Q. And you reviewed that exhibit, did you, sir?

A. Yes, sir. [248]

Q. Subsequently, did you review or examine Defendant's Exhibit 5, which I believe is a record of Mr. Hennessey with the St. James Hospital in the year——

A. That is the nephritis case?

Q. With particular reference to the nephritis, yes? A. Yes, I looked over that.

Q. And then on today, Doctor, did you examine Defendant's Exhibit 1-A, which I believe is in evidence here as a hospital record in St. Vincent's Hospital for a period from the 29th of November, 1949, to December 4th, 1949, did you look that record over? A. Yes, sir.

Q. A hospital record related to laryngitis?

A. Yes, I saw that, it is not important.

Q. Now, Doctor, in this examination that you have testified to, did you have Mr. Hennessey on more than one occasion to do this work?

A. Yes, I saw Mr. Hennessey twice. He came in one day and he told me about his case, and I examined him, and then I didn't see him again for about two or three weeks, and then on January 10th, he came in and I gave him his examination; I took

(Testimony of C. H. Horst.)

his history and studied the case and reported the case afterwards and reviewed all of his history as he gave it to me.

Q. Now, Doctor, for a proper diagnosis and study of a [249] condition of a patient, will you say whether or not the history is an important item for a physician to study, and was it in this case an important item for you to study?

A. Well, if you are going to examine a patient, you have to take a history. If you don't take a history and you just examine him for what he comes for like you have to do lots of times, you can't understand a case like this. This is a very difficult case, because there are here involved, first of all——

Mr. Angland: Just a minute, now, Doctor, I think you have answered the question. You said the history was important.

A. Yes, that's right, it is important.

Mr. Angland: I think that is the answer to the question. You have answered the question. We don't want you to go onto say——

A. We have come pretty far, and I would like to get through.

Q. Will you relate to the Court what you did in connection with this examination, including the history you received, will you relate that to the Court, please tell it? A. What I found?

Q. No, tell us your history and the result, and the method of your examination, the complete detail of it?

(Testimony of C. H. Horst.)

A. Well, I thought I had already explained that. I met the patient and took his name and his age and then I asked him what he was suffering from. Now, then, do you want me to go [250] on—then I pursued the course I explained to you a few minutes ago.

Q. I would like to have you tell us the items you considered so it will be in the record, so we will know what you took into consideration.

A. Then, after I found out what he was complaining of at the time he came to my office, then I asked him about his family history; then I took up his personal history. His personal history consisted of reviewing the various illnesses from which he had suffered in a reasonable—since he was a young man; then I reviewed the history of the accident that he had in Pocatello, and then I asked him about his—I asked him about his subsequent history, and then I made my examination, and then after I examined him, I made a resume of the notes I had taken, and then I concluded what was wrong with him.

Q. Will you give us the substance of that examination, tell us the substance of it, all the examination, at this time?

Mr. Angland: Just a minute, if the Court please, I don't think the doctor has given us sufficient information as to the history as he knew it. He has advised us of the importance of the history, but he hasn't told us what history the plaintiff related to him, your Honor.

(Testimony of C. H. Horst.)

Mr. Doepker: That is what I am asking for right now.

The Court: Very well. [251]

A. Then, I will make it more definite. Now, his family history, his father died in 1942, and he didn't know what he died of; his mother is living and well; he has two brothers, one, age 21, killed in the war, and one aged 33, living and well. He has one sister; she is living and well, and he has no dead sisters; and there is no tuberculosis, insanity, epilepsy, cancer in his family history. His occupation is attorney; he graduated from Montana Law School in Missoula, Montana, in 1943, at age 26; he took a prelaw course at the School of Mines, Butte, Montana, 1938, and at the University of Montana in 1939; he had a legal course at the Montana Law School, 1939-1943; he received a degree, L.L.B. He has a B.A. Degree, University of Montana; 1943 he was licensed to practice law in Montana. He took part in college athletics, sports; he has no hobby; he always enjoyed good health; his appetite is good; bowels, regular; sleeps well. He has been able to sleep for the past eight months. He can do his office work now, but had considerable trouble in his back left leg when he has law cases before the court and investigating cases; right leg only bothers him when walking. He has a specially made high heel shoe; right leg only bothers him when walking; calves of both legs pain him when walking; wears special made high heel shoe to compensate for the abnormal position of his left foot. Now, his birth history, his

(Testimony of C. H. Horst.)

birth, normal; he had measles, mumps and colds when a child; never had scarlet fever, [252] diphtheria, St. Vitus' dance, cholera, rheumatism, heart disease, or poliomyelitis. In 1933, while a high school student, he contracted pneumonia, which was complicated by acute nephritis. He was in the hospital in St. James for six months; he made a good recovery; later he was rejected by the Army and Navy and Air Corps in 1942, based on the fact that he had suffered from nephritis. He passed the Air Corps examination once and flew for three months, and the Civil Aeronautics Authority. He passed the Army examination in Butte once, but was rejected later in Missoula, reason, history of nephritis. He had an attack of acute nephritis, or acute laryngitis in November of 1949; in the hospital five days, made a good recovery. Beverages from the time he left school—at the time he was injured in Pocatello, Idaho, he drank whiskey moderately occasionally; he drank to excess in March and April, 1951; he drank too much; he wound up in the hospital for a week, he was treated for alcoholic poisoning; after he left the hospital, he quit drinking in May and June, drank moderately in July, excessively at the end of August. At this time he was hit on the head and was hospitalized from September to October, 1951, suffering from concussion of the brain. "I lost my equilibrium and suffered from headaches. I was dismissed from the Hospital October 1, 1951, and resumed my work November 1, 1951. Have done no drinking since." Accidents:

(Testimony of C. H. Horst.)

“Automobile accident in 1947, going to Three Forks. I rolled my car over [253] between Toston and Three Forks, injured right shoulder, couldn't lift my right arm up, wrenched muscles and nerves, X-rays negative; absent from office four days, suffered from the shoulder six months. In plane crash in Butte, 1948, Northwest Air Lines, no passengers injured, belt I wore injured my abdominal muscles; no doctor consulted; took plane next day for Billings, Montana; arrived; I went to work, no subsequent complaints.” History of accident in Pocatello, Idaho, June 2nd, 1949, “I was out in the airport at Pocatello, Idaho, waiting to take the two p.m. plane to Butte; went into rest room; I was washing my hands and suddenly an object, which was a man, fell from above me, striking me across right shoulder and lower back; shook me; I didn't go to the floor; I brushed myself off; talked to a fellow who fell on me and to another man who was standing near me. He asked me if I was hurt. I told him my shoulder pained, but I was all right. I also told the fellow who fell on me it was a good thing he wasn't a lot bigger, or he would have crushed me. The man who was standing there and myself went out to the desk and told the girl at the desk about it. I told her except for my right shoulder, I didn't think I was hurt. I took the plane and came to Butte. The next day I went home to Billings. My right shoulder was stiff and sore, and I consulted Dr. Soltero, an M.D. He gave me three diathermy treatments for my shoulder and let it go at that. He

(Testimony of C. H. Horst.)

told me it was the type of injury that a medical doctor [254] couldn't do much with, and that whenever it bothered me again to go to a good osteopath and have it rubbed out. After that I had a nurse rub it when necessary. I did not need my shoulder in my work, so I just let it go. November, 1949, I had a severe attack of laryngitis. I couldn't talk. Confined to St. Vincent's Hospital in Billings four days; made a complete recovery. January 3, 1950, I had another attack of laryngitis, bronchopneumonia on the hospital record. Dr. R. S. Stokoe sent me to the Deaconess Hospital, Billings, Montana. January 7th, 1950, Dr. Stokoe told me I could leave the hospital. I got up and prepared to go to town. I was partially dressed when suddenly my left leg went numb. I reported to the nurse who was in the room as she was making the bed for the next patient. She told me it was all right, that I had been in bed for three days, so I went back into the bathroom to brush my teeth, and came back out and suddenly both legs were numb, and I keeled over. The pain was severe, and I don't know what happened—"I lost my place—"I don't know what happened for several days. When I became aware of my surroundings, how long it was, I don't know, I noticed I was in bed, and the bars were up on the bed. The supervisor of the nurses came in and said the bars on the bed would have to stay up for a few days. All I know, I had a terrifically bad pain in my left leg, and I couldn't bear to touch it. It was

(Testimony of C. H. Horst.)

covered with a hood to keep the bed clothes from touching [255] the skin. The legs would go into spasms when I lay there, it just jumped like that. The spasms would last five or 10 minutes, sometimes longer. When these attacks came on, they gave me hypoes. These attacks lasted as long as I was in the hospital, and even now they come at night if I am unusually tired. During the day, these spasms come on. They last a few minutes and then go. When I was in the hospital, at first the pain would shoot down my left leg to the foot, and my right leg would extend involuntarily and push with great force against the foot board of the bed; the left leg did not move. This kept up for six weeks while I was in the hospital, and after I left the hospital even, these attacks were very frequent, 10 to 20 a day; they would last two or three, sometimes 10 minutes at a time. They kept up night and day. I was under sedatives most of the time, I think. I had the sedative cut off myself. I was worried, I feared it was too much. For the entire year I hardly slept at all because of these pains. The doctor told me I had forgotten how to sleep, and he didn't know what I was going to do. I took Buerger's treatments—" Buerger is the name of a doctor—I took Buerger's treatments and physiotherapy, rubbing and manipulation in the hospital. A week before I left the hospital, I was sent to the Billings Clinic, where I received hydrotherapy. I took this treatment all summer after I was discharged. For awhile I took it every day, then they cut it to [256]

(Testimony of C. H. Horst.)

three times a week. This continued all summer. Then, I quit of my own volition against the doctor's orders. At first after I left the hospital when I would go from my room in the hotel to my office across the street, my left leg would swell up, turn purple and pain terrifically. When I elevated my leg in the office, the swelling and color would go away, but the pain remained. At the present time, the bottom of my foot aches like a toothache, and my leg from its middle to the foot feels about half asleep. Sympatheticectomy has been recommended. I can't sit for any length of time without discomfort, nor stand for any length of time, even now, without pain. When I elevate my foot and rest it on my desk or chair, I am relieved of pain. The left foot is deformed. It is held in rigid flexion. There is present very moderate inversion and lateral motion, and some additional flexion beyond that already present. It is impossible to extend my foot back. The Achilles ligament is taut and the cap cuscles are firm and contracted. When walking, I walk on the ball of my foot; and I wear an especially heeled shoe to accommodate the position of my foot." X-ray examination: Comparison examination of both ankles shows no evidence of fracture or dislocation——

Mr. Angland: Are you going into your examination now? You have finished your history, have you?

A. That is the history, sir.

Mr. Angland: Yes. [257]

A. This is the physical examination: X-ray ex-

(Testimony of C. H. Horst.)

amination, right and left ankles, comparison examination both ankles show no evidence of fracture or dislocation. Bones of left ankle and foot show a diffuse, irregular type of demineralization. This type of change is seen in several conditions, namely, disuse, atrophy——

Mr. Angland: Just a minute, that is the roentgenologist's report. I will ask that the doctor tell us about the examination.

The Court: Is this report from the roentgenologist?

A. That is the report from the roentgenologist.

The Court: We just want your examination.

A. All right, sir. Physical examination, well-nourished white man; age 36; height, six feet, one-quarter inch; weight, 181; color, good; eyes, blue; tongue, moist, red; smooth shaven; walks with slight limp of left leg; cerebation, good; chest, well developed, normal in size; heart——

Mr. Angland: Just a minute, I think the doctor now, rather than giving his examination, is giving his conclusions when he tells us the condition of the heart. I think the question, your Honor, was what did he examine, what did he do, not the result of his examinations, your Honor.

The Court: Yes, I think that is so. You are telling us his heart is good. That is your conclusion as a result of your [258] examination. What you have to first tell us is did you examine his heart, how did you examine it, what examination did you make. We have to get that first.

(Testimony of C. H. Horst.)

A. I examined his heart. I will tell you what I did. I had him take off his shirt—he was disrobed for this examination anyway, so I took my stethoscope in my hand and looked at the chest and looked to see where his point of maximum impulse of his heart was, so I put my stethoscope on there and I listened, and the sounds were clear at the apex and base; there were no murmurs in his heart; it was a normal heart; then I took him by the wrist and put my hand around his wrist——

Mr. Angland: I am going to ask the Court to direct the doctor to respond to the question by the counsel for the plaintiff. The doctor insists upon giving us what he found; he wants to give us conclusions as he goes through as to what he found. As to whether or not his conclusions are going to be admissible is quite important in this case. We are perfectly willing to have the doctor testify to the fact he gave him a physical examination, and if the doctor or his counsel want to detail about the examination, fine, but I think the witness should be instructed not to give the results of that examination until proper questions are propounded to him.

The Court: Yes, I think you had better proceed on a question and answer basis so we can confine the testimony so that [259] counsel has an opportunity to make objections as they arise.

Mr. Doepker: Well, we will proceed then. You were relating at the time of the objection what you did towards making an examination of the patient's

(Testimony of C. H. Horst.)

heart. Have you completed saying what you did, Doctor, in the examination without giving your conclusions?

The Court: Have you told us everything you did in your examination of the heart?

A. His heart was normal.

The Court: No, we don't want your conclusion, Doctor, we want you to tell us everything you did in examining his heart, that is all. You have told us you put the stethoscope on him, is that right?

A. Yes, I listened to the sounds.

Q. (By Mr. Doepker): Did you make any further examination of the chest, and what examination did you make? A. I examined his lungs.

Q. And how did you go about examining his lungs?

A. Well, I first of all watched his breathing, then I percussed his chest; then I took the stethoscope and listened to the breath sounds.

Q. That is what you did in that examination, is that right? A. Yes, sir.

Q. Then, did you do anything else with regard to his pulse, did you take his pulse, or make an examination of his pulse? [260]

A. Yes, I took his pulse; I palpated his pulse at the wrist and took my watch out and counted the number of pulsations.

Q. All right, and then did you make any examination of the arterial walls that was subject to your examination? A. Yes, sir.

Q. What did you do to that?

(Testimony of C. H. Horst.)

A. I felt the pulse to be sure I had the artery, then I rolled it under my fingertips to determine whether it was soft or hard.

Q. Then, did you make any count of the pulse beats or not? A. Yes, sir.

Q. Did you take his blood pressure?

A. Yes, sir.

Q. Did you make any examination of his abdomen? A. Yes, sir.

Q. What examination did you make, Doctor, without stating your conclusions?

A. Well, I inspected the abdomen, and then I—I can't tell that—then I looked at his abdomen, and I put my hand on it and I felt nothing.

Q. Did you feel for any masses, or feel for the liver or the spleen? A. Yes, sir.

Q. Did you make any further examination of him at that time? [261] A. Yes, sir.

Q. What was that?

A. Then, you see, I was only half through the examination. I'll just see where I was.

Q. At the end of the examination of the abdomen. A. Then I examined the genitals.

Q. What did you do towards examining the urine?

A. I examined the urine; I took the gravity of the urine and I tested it for albumin and sugar.

Q. Then what further examination did you make of the abdomen?

A. There wasn't anything else to it, it was normal.

(Testimony of C. H. Horst.)

Q. I see, okay. Then what further examination of Mr. Hennessey did you make?

A. I examined his reflexes.

Q. To do that, what did you do? Just tell us what you did, not what the result was.

A. I looked at his eyes, and I looked at his pupils, and I had him close his eyes, and I looked at his pupils, and I had him open his eyes and looked at the pupils, and I pinched him on the side of the neck and I watched his pupils; then I had him look at my right eye with his right eye, and I had him hold his hand over his left eye and his eye closed, and I took a pencil to over the top of his head like that (indicating), and I told him to say "Now" when you see this pencil up here, left, right, left, right; and then I had him cross his legs and I hit him with a hammer on his tendon of his knee; then [262] I had him close his eyes and look at the ceiling, and I watched him; then I had him close his eyes and take his finger and see if he could touch the end of his nose like I am doing now; then, let's see what I did, some more, and then I examined his glands; I felt for glands in his neck, in his axilla, and I felt for glands in his groin, and then I examined his sensory mechanism. I took a pin and I stuck it around on his legs, and I took a test tube that had very hot water in it, and I took a test tube that had very cold water in it and tested him and asked which was hot and cold, and I took a stick that had a little wad of cotton on it, and I

(Testimony of C. H. Horst.)

traced that over his legs; then the next thing I did, I measured his legs, and then, before I measured them, I inspected them, I looked at them, then I measured them, and then I looked especially to see if he had—then I looked at his legs for swollen veins, I inspected the legs for veins, and then I pushed in with my thumb on the calf of his legs, and then I pushed in on the soles of his feet, and I examined his urine and, and I took and looked at his face, and I pulled his eyelids down to see what color they were, and I had him put his tongue out to see what that looked like, and then I made a resume of this case that you don't want to hear, and then I came up against the trouble that he was suffering from, and then I finally came to that.

Q. Now, then, Doctor, from this examination, including your [263] study of the Defendant's Exhibits that I have called to your attention, did you have any findings, first, with respect to your present physical examination that you were making at that time? You may answer that question yes or no.

A. Will you please read the question once more?

(Question read back by Reporter.)

A. Yes, I had findings.

Q. Now, I want to call your attention to the examination that you made at that time of the man himself. I believe I have a copy of your report, and will you state what the result was of your physical examination of him at that time?

Mr. Angland: I take it that question means, as

(Testimony of C. H. Horst.)

to what his condition was, means right then, on January 10th, 1953?

Mr. Doepker: That's right. I am now asking for your conclusion.

The Court: Your conclusion, as a result of all this examination you have made, what was his then physical condition, what did you find as a result of that physical examination?

A. I found that he was lame in his left leg, that he was walking on his toes.

Q. Can you refer to your notes, please; in regard to the physical examination, you have given us what you have done and I now ask you for your conclusions, starting out with the physical examination at the head and the chest?

A. My conclusions are that this man—— [264]

Mr. Angland: We don't want your conclusions as to what occurred, as to why he was in that condition. This is just what his condition was on January 10th, 1953.

A. Well, he was able to come to the office, and he had a lame leg, which was very painful, and the examination showed that the calves of his legs were painful.

Q. (By Mr. Doepker): May I ask and direct your attention to what you discovered upon that examination with respect to his chest, what your findings were at that time?

A. Well, his chest was normal, the lungs were normal, the breath sounds were clear, there were no

(Testimony of C. H. Horst.)

rales, noises in the chest, there were no friction rubs, both right and left lungs were normal.

Q. What did you find with respect to the heart, what was your findings with respect to the heart?

A. The heart was normal in size, the point of maximum impulse was in the fifth left interspace. It was in the clavicular line. The sounds at apex and base were normal.

Q. What did you find with respect to the pulse?

A. The pulse was regular. It beat 72 times per minute; the artery walls were soft.

Q. What did you find with respect to blood pressure?

A. Blood pressure was normal—pardon me, just a minute—the blood pressure was 120 high and 80 low. Both arms were tried, 120 high and 80 low. [265]

Q. What do you say with respect to the breath sounds?

A. The breath sounds are sounds you hear when you examine the lungs, and I just told you they were clear.

Q. I am sorry, I didn't hear that. What was your findings on that occasion with respect to the abdomen?

A. The abdomen, it was apparently normal. On the right side there were very long, half curved, linear scars on the anterior surface and in the groin; the left side scars were the same, but not so many; and I palpated the abdomen, and I did not find the edge of the liver; I percussed the chest

(Testimony of C. H. Horst.)

above to determine the height of it in the chest, and that was opposite the 4th rib; I felt for his spleen, and it wasn't palpable; I felt for his kidneys and they were not palpable, so I didn't get any satisfaction out of the abdomen, it was normal.

Q. What have you to say with respect to the examination of the urine?

A. The urine was of light ground color, and it had a specific gravity of 1.024 and reaction alkaline; no albumin, no sugar.

Q. And what did you find with respect to the neck? What do you mean by adenopathy?

A. That means if there is any enlargements of the glands of the body; so I felt for his neck, there were no glands; I felt in the axilla, there were no glands; and I felt in the groin, and he had none, so he had no adenopathy. [266]

Q. What was the result of your examination that you detailed with respect to the eyes?

A. The eyes were blue, the pupils were round, they were equal in size, they reacted normally to light and accommodation. His visual field was normal.

Q. All right, what about the neurological examination you have testified to?

A. The knee jerks, left, were very responsive and very active, and graded on a rule of four pluses, four plus being the maximum amount of reaction you could get from any jerk test, it was three plus. Now, that is very important. Now, the right knee

(Testimony of C. H. Horst.)

jerk was moderately active, it was two plus. There was no clonus.

Q. Explain what that is, Doctor.

A. You take the patient is supine—he doesn't need to be, but he can be as I am sitting; then you push up on the sole of the foot, give it a quick jerk, and if it is present, it responds by frequent contractions. He had no clonus. Now, the plantar-flex, the left sole of the foot was very sensitive. I had to try and try again before I got a reaction because he jerked it away. Finally I got it. His foot jerked convulsively at one time. It was completely involuntary for a few seconds. The final result was that there was normal plantar reflex, the right was normal and active, and the Achilles reflexes [267] were inactive.

Q. All right. What was the result of your examination with respect to disturbance of sensation, and this examination with respect to pain, heat and cold, and so on.

A. Well, now, I tried, first, I took a pin—I told you this once before.

Q. No; I am asking the result of it.

A. His sensory was—there was no sensory disturbance.

Q. What about deep pressure on the middle calves of the leg behind?

A. They were very painful, both of them.

Q. Did you find any rigid or hardened areas with the skin over the femoral, popliteal, and tibial blood vessels?

(Testimony of C. H. Horst.)

Mr. Angland: Just a minute, before he answers. I don't know what your Honor's position is, but I am sure I don't know what vessels he is talking about.

The Court: That is his problem. If I don't understand it, it is his tough luck.

A. You ought to know what we are feeling for; we are feeling for the condition of the peripheral blood vessels. We have to designate them. Just because you don't know the names—I don't have a map here.

Mr. Doepker: We have a bodyscope here.

The Court: It will be quicker; I can follow him.

A. There was no change or rigid indurated—indurated means [268] hard places—felt when the skin over the femoral—that is the artery that extends here from the groin to the knee, that is the femoral artery. I couldn't feel that. I got the pulse up here (indicating). The artery wall was normal. The popliteal is the artery—you feel for the popliteal space, that is behind the knee, and then——

Q. Tell us where that runs, Doctor, where you can palpate it?

A. Well, it is the lower end of the femoral artery, and then it goes into the tibial artery in the leg, which is a very important artery to feel, which will come up in this case, which is this artery on the back of the foot, the dorsalis pedis artery. I felt it and it pulsated, and it was normal, and there was no thickening of the artery; there were no thicken-

(Testimony of C. H. Horst.)

ing of any arteries to indicate he had an arteriosclerotic condition.

Q. Give us the result of your inspection of the left and right leg?

A. On inspection the left leg was definitely smaller than the right one. The measurements were not especially remarkable. The right leg circumference, seven and a half inches above the middle of the kneecap was 21 inches, and the left leg circumference also seven and a half inches above the middle of the patella was $20\frac{1}{2}$ inches, a difference in circumference of one-half inch. The right calf circumference, 12 inches up [269] from the internal malleolus, was $15\frac{1}{2}$ inches, and the left calf circumference, 12 inches up from the internal malleolus, was $14\frac{1}{4}$ inches.

Q. Doctor, is that internal malleolus, is that a portion of the foot?

A. It is a portion of the bone, a portion of the ankle bone. It is this nob here (indicating) that I have my finger on.

Q. What did you discover with respect to the veins?

A. No swollen, or unusually swollen or dilated veins present in either leg. A few veins were present just above the internal malleolus of the left leg. Deep pressure on the muscles of the legs, calves excepted, produced no remarkable tender areas.

Q. Now, Doctor, from this that you have related, and from your examination of the hospital chart of the Deaconess Hospital, and an examination of the

(Testimony of C. H. Horst.)

chart of St. Vincent's Hospital, and the examination of the chart of St. James Hospital, which are identified in this case as Defendant's Exhibit 2, Defendant's Exhibit 5, which is the St. James Hospital chart and record——

A. Pardon me, Mr. Doepker, will you tell me what the diagnosis was on those?

Q. No, I am going to ask you a preliminary question; I am going to ask you—read the question so far.

(Question read back by Reporter.) [270]

Q. ——and Defendant's Exhibit 1, that is, the 1-A portion of Defendant's Exhibit 1, which is the chart of the St. Vincent's Hospital, and the record concerning the illness of November 29th, 1949, from that examination, and your examination that you have related, and the history of the case that you have related, will you say whether or not you are in a position to give your opinion concerning this case? You may answer that yes or no.

A. Well, of course, yes, but I am sorry that I can't identify them by just saying they were at St. Vincent's. May I have the histories? This one is laryngitis. That was on 11-29-49, I believe.

Q. That's right.

A. I understand that history. He had laryngitis and he was in the hospital a few days. This (indicating) is a terrible concussion.

Q. I am not asking you about that because it comes in subsequently.

(Testimony of C. H. Horst.)

A. I understand this one, this is——

Q. The one you have just identified is 1-B?

A. Yes, sir, and 1-C.

Q. And 1-C is alcoholic poisoning?

A. Yes, sir, I understand that, it is 1-C; yes, sir, I have reviewed those histories, and then further, I have related them in my history. [271]

Q. I now call your attention to the one which I have called the St. James Hospital record, Defendant's Exhibit 5, and ask you whether you are——

A. That is the chronic nephritis case?

Q. The chronic nephritis case, yes.

A. It says here it is echymosis, conjunctival echymosis.

Q. That is where he had his eye hurt in a hand-ball game. I am referring to the rest of it here.

A. Yes, sir. The rest of it isn't here, there is no history here. If that is the chronic nephritis, I know about it.

Q. There is no history here? I think I saw it?

A. It must be my fault, I saw it. This is the nephritis—I don't know—I wonder if it could be here.

Q. Well, at any rate, did you examine this record that is here of the St. James Hospital episode—here it is—beginning with the month of April, 1934, and continuing on through to October, 1934, starting with the pneumonia, and then winding up with nephritis?

A. This says, "Central pneumonia and gastri-

(Testimony of C. H. Horst.)

tis," and then here is one "enetritis"—I don't know how they all got mixed up, I am sorry. I am familiar with the enteritis, and with the trouble about the nephritis. The history, I am sorry, it is not there.

Mr. Angland: It should be there, it should be one of those files, it was here. [272]

The Court: Is there any evidence here that there was any history of nephritis?

Mr. Angland: I don't know. There was nephritis, the hospital record of that is all I know about.

Mr. Doepker: Here it is, your Honor.

A. This acute nephritis, I went over this history quite carefully. He entered on the 25th of June, 1934, and was dismissed on 10-20-34; yes, I knew that history, I examined it.

(Previous question read back by Reporter as follows: Q. Now, Doctor, from this that you have related, and from your examination of the hospital chart of the Deaconess Hospital, and an examination of the chart of St. Vincent's Hospital, and the examination of the chart of St. James Hospital, which are identified in this case as Defendant's Exhibit 2, Defendant's Exhibit 5, which is the St. James Hospital chart and record, and Defendant's Exhibit 1, that is, the 1-A portion of Defendants Exhibit 1, which is the chart of the St. Vincent's Hospital, and the record concerning the illness of November 29th, 1949, from that examination, and your examination that you

(Testimony of C. H. Horst.)

have related, and the history of the case that you have related, will you say whether or not you are in a position to give your opinion concerning this case? You may answer that yes or no.)

Mr. Angland: Just a minute, the form of question is objected to, your Honor. An opinion as to this case might mean an opinion that your Honor is going to be called upon to give in [273] the final analysis.

The Court: Yes, what opinion does it have reference to. You will have to change your question, Mr. Doepker. He may be in a position to give a lot of opinions, but some of the opinions may not be admissible or of concern to us. Direct it to a particular matter.

Q. By the question I further want it understood I am asking the doctor if he has, from the matters that have been referred to in this question and that are in evidence in this case in the way of exhibits and hospital records, plus his examination that he himself made, and the history which he has given, if he is in a position to give his opinion as to the cause of Mr. Hennessey's condition that is referred to in this case, and the matters that are referred to concerning his condition in the present case, your Honor.

Mr. Angland: Your Honor, I am going to object to any answer by the doctor along that line. The history he has given to the doctor is not the history of the plaintiff in this case as it has now been in-

(Testimony of C. H. Horst.)

troduced in evidence. Particularly I note that the doctor referred to an automobile accident. The doctor has not consulted with the doctor who was the same doctor who treated the plaintiff at the time of the return from Pocatello, Idaho. The treatment, according to the doctor who was in attendance, is the same, the history is the same.

The Court: Well, I think that all goes to what weight should [274] be given to his opinion.

Mr. Angland: I think it goes to the admissibility of the opinion. The history before the Court is a history different than the history the doctor——

The Court: He is not basing his opinion upon the history before the Court. He is basing his opinion upon the history he has recited that was given him. I will reserve ruling upon the objection and consider it further, if you think there is any merit to it, if there is any question.

Q. The question was, do you have an opinion? Do you remember the question?

A. Yes. Well, my opinion is that the man was treated for laryngitis and that he was treated for chronic nephritis, those histories show, and that he had some trouble with his nose. They don't seem to be material in this case. I didn't question it, so——

Q. Now, directing your particular attention to the condition that has been displayed by the chart from the Deaconess Hospital which you have stated you have studied, the time between the 3rd of January, 1950, and March 12th, 1950, and the condition of the plaintiff's body, as disclosed by that chart,

(Testimony of C. H. Horst.)

do you have an opinion as to what caused that condition? A. Yes.

Q. And can you explain it to the Court?

A. I will try to—— [275]

Mr. Angland: I don't think there is enough included in that question to make the answer admissible for any purpose, the answer of the doctor.

The Court: I didn't understand the question myself. Read the question again.

(Question read back by reporter.)

The Court: I don't understand what you are going at here.

Mr. Doepker: Your Honor, may I explain to the Court I am trying to direct his opinion now to the cause of this leg trouble that he had on the 7th of January, 1950.

The Court: Very well.

Mr. Doepker: And we were trying to take it in sections, rather than the entire matter.

The Court: I don't see how you can take it in sections. You have got an entire situation and you can ask it, but it has to be based upon that. That is the only opinion he can give. You can't do it in sections, it has to be as a result of the whole picture as he has it.

Mr. Angland: As I view it, unless it includes the whole picture, it has no probative value, and with the history as he has it, it has no probative value.

The Court: That may be so, Mr. Angland. Let's

(Testimony of C. H. Horst.)

get this in and you can argue it later. For the time being I will reserve ruling on your objection, and you can make argument on your objection later. Let's let the doctor give an answer and get through with this case sometime tonight. [276]

Q. Give us your conclusions on this case as now explained to you by his Honor.

A. The history referred to, on June 2nd, 1949, is that what you want?

Q. No, I want your analysis of the case, your opinion on this case, from what we have discussed here and the matters called to your attention.

The Court: You know, Mr. Doepker, just for your own benefit, I don't know that you can go ahead this way. I am not going to worry about it, it is your worry——

Mr. Angland: I want an objection to all of it.

The Court: It is understood it is all going in under objection, but you may find yourself in the position, after the case is all closed and the evidence is all in, that I can't even consider the evidence. You had better be sure that the testimony that you are eliciting, because it is going in under objection, you had better be sure it is admissible. You had better be sure the question you ask is one which the doctor, under the rules of evidence, is entitled to give evidence on; you had better be sure the proper foundation is there, because, as I say, Mr. Angland is objecting to all of this. It would be a terrible thing for me to look it over and say the proper foundation wasn't asked, the question wasn't

(Testimony of C. H. Horst.)

based upon the proper foundation, so that I couldn't even consider Dr. Horst's [277] opinion in the matter. I'll tell you what, I have just received some information that the case set before the jury tomorrow morning, or Monday morning, will probably not be tried, and I think it would be worth your while to prepare a proper set of questions to ask the doctor, laying the proper foundation and asking the proper question. Now, as I say, it is entirely up to you.

Mr. Doecker: Your Honor, I desire, then, if they are objecting that this history is at variance with the evidence in this case, it will be necessary for me to ask the doctor to assume facts that take us through all those exhibits, and I am willing to proceed and ask that question. That is the only way we can go if they take the position that the history is not in accordance with the evidence here, or if there is any material variation between the history the doctor has related and the evidence that is before the Court.

The Court: Well, I am not entirely clear that because the history he has related doesn't square with any other evidence here, that that necessarily excludes the testimony, but it just goes to the weight of it. If the doctor's history doesn't include some of the things that are actually in evidence, that will go to what weight should be given to his opinion in the light of that, but it is a matter for you to be concerned with. I don't care what question you ask, but the only thing it is being objected

(Testimony of C. H. Horst.)

to, and I want you to be sure, to be clear, [278] that you are on sound footing so that later you won't be washed out on some technicality. If you are satisfied, why, let's go ahead. Court will stand in recess until 4:30.

(Ten-minute recess.)

The Court: Very well, let's proceed with this.

Mr. Doepker: After deliberation and consideration, I want to renew the question which I have asked.

The Court: Which you have previously asked?

Mr. Doepker: And I want to add the further considerations to the doctor to this extent: that I want to ask him to assume that the facts, as he has related them in his history, were true; I want to further ask him to consider that the Defendant's Exhibit 1 was a record that was made in the regular course of the operation of the hospital at Billings, Montana, that is, 1-A, which is a record made prior to the Deaconess Hospital record 1-B and 1-C, which were made subsequent to them; I want you to consider that they were all made in the regular course of the operation of the hospital and have been testified to as correctly setting forth the record of Joseph P. Hennessey, the nurses' and doctor's, as they relate in that record; I want you to also consider that the Defendant's Exhibit 2 was a record of Joseph P. Hennessey, that it has been testified to, [279] and I want to assume that it is a fact that this record is kept in the regular course

(Testimony of C. H. Horst.)

of the operation of the hospital, the doctors, the laboratory, the X-ray and the temperature records, and the nurses' records were all made in the regular course of the administration of the hospital, as nearly as humanly possible are correct, and with respect to the defendant's Exhibit 5—has that been introduced in evidence, your Honor? I believe it has——

The Clerk: Five is in.

Mr. Doepker: All right—that the same is true with respect to this record of St. James Hospital, that is, here in Defendant's Exhibit 5; I want to assume those things as facts—we want to save the recitation of these entire records, it would take several hours—then, with respect to the automobile accident that was testified to that took place on the highway between Toston and Three Forks, Montana, that Mr. Hennessey—I want you to assume as a fact in addition that his right shoulder was injured, and that the doctor, Dr. Harry Soltero testified that there were no broken bones, nor no dislocations in that shoulder at that time; that he treated him for two or three days with diathermy; that subsequent to the 2nd of June, 1949, the same shoulder was injured in the fall of the man from the ceiling of the men's toilet at Pocatello, Idaho—I believe that you have that also in your history; I want you to assume that also is correct, and [280] that Mr. Hennessey was struck in the same shoulder at that time, in addition to the history that you have related, and considering those things and your

(Testimony of C. H. Horst.)

own physical examination of the plaintiff, Mr. Hennessey, the history of his life as given to you, with his injuries and illnesses, and your study of these hospital records that are now in evidence in this case, I want to ask you upon that basis, are you in a position to give an opinion as to the cause of plaintiff's present physical condition?

A. Yes.

Q. Will you give us that opinion?

A. Well, I think Mr. Sullivan sustained——

Q. Do you mean Mr. Sullivan or Mr. Hennessey?

A. Mr. Joseph P. Hennessey, pardon me, has had a thrombus of his inferior vena cava, that he has suffered from emboli to his spinal cord causing anoxemia and thrombosis to some vessels in the spinal cord, resulting in disturbed spinal reflexes.

Q. What, in your opinion, do you believe is the cause of this condition?

A. I think it was caused by the man falling on him in the Pocatello Airport on the date specified here.

Q. The 2nd of June, you mean, 1949?

A. Yes.

Q. Now, will you explain to his Honor, your reasons for this opinion which you had? [281]

A. Yes, sir. Now, the crux of the question about this is: Where was this embolus started, was it on the—was it from the arterial side, or was it from the venous side? Ordinarily, all emboli, most of the emboli, do come down from the arterial side. This

(Testimony of C. H. Horst.)

is an unusual case, and the emboli, in my opinion, is here on the venous side, at the junction of the vena cava—the vena cava is this blue body (indicating on chart), and this is the aorta and the iliac arteries, and this is the vena cava to here, and these are iliac veins (indicating on chart). It is my opinion that this thrombus developed here at the junction of the two iliac veins of the vena cava. It formed right there, and that it formed as a result of this accident. Now, the history shows that the man first had a pain in his left leg when he got up out of bed, after he was told to get up, on January 7th, and the leg was struck numb, and then afterwards, when he went into the bathroom and came out and got a terrific pain, and the pain—then the pain developed in this right leg. Now, the question is, of course, how did the thrombus develop here? That thrombus is an intravascular affair which develops within the vessel itself, and, of course, there has to be something extraordinary happen to have the blood coagulate in the vein, because none of the blood in a normal individual does coagulate in a vein or artery; so in order to explain that, when this man fell and his body struck Mr. Hennessey on the shoulder, it hit him on his right shoulder, and he was [282] unprepared for it, and, of course, it caused a distension of all of these vessels, and, of course, the vessels can stand just so much pressure, and they will get a crack in the lining of it, which is called the intima, or they get multiple cracks in it, or it may be in this place, contusions,

(Testimony of C. H. Horst.)

because when the force of the body falling on Mr. Hennessey was transmitted through his body, it caused a congestion or distension of all of these vessels and veins. All right. So, if a vessel has a crack in it, or it has a multiple contusion in it, to cause the intima to split, from that wall in the intima comes a ferment. It is called thromboplastin. So, the moment that that crack or contusion develops, then the blood—certain elements of the blood go to seal that condition in the vein that is involved. Now, those blood elements that go to seal the injured vessel, the principal ones are plateleta thrombocytes and leukocytes, or thrombolysins and are sealed by the thromboplastin. So, that is the manner in which the thrombus developed, and that is how it happened to be here. Now, then, in my opinion, that is the way I have worked it out. Now, then, that is what they call a bland thrombus, and it sticks on the wall of the vessels. Now, in order to explain this thing, this blood goes up, and I say that the thrombus went down. Now, that is the difference. Now, if it went down, then that first part of it went here on the left iliac vein, and then afterwards a big portion of it went down on the other side. Now, may I [283] introduce just a little story from a history of a case that I have in the book?

The Court: Just explaining it, surely.

A. Now, in this book, which was written by Dr. Treves—he was a great English surgeon—and the book is called “Applied Anatomy,” and it was pub-

(Testimony of C. H. Horst.)

lished—there have been many editions of it, but this edition was, the first edition was gotten out September, 1883, and it has been and had frequent editions to it. Now, I am introducing this history because it will explain why that thrombus was on the vena cava, and why it split; and then there are from the history certain portions, I have taken from the history certain portions to explain it.

Mr. Angland: Is this just by way of explanation? Is this the history of a case that—Dr. Street, is it?

A. No, sir, his name is Dr. Treves, he relates this in this book.

Mr. Angland: He relates the history of a case that he encountered?

A. Yes, sir. This is the history: “As a young man, Dr. Pollock won the university 120-yard hurdle race in 16 seconds, making a record. He held breath throughout the race and collapsed when the tape was passed. Holding the breath dams the blood back in the great veins. The heart and pulsating muscles in such a race must force the blood onwards into the great venous trunks, with the result that the inferior vena cava [284] becomes over distended, damaged, perhaps thrombosed, and then finally occluded generally. The veins leading from the groin to the axilla at best become extended and varicose, and thus taking the place of the inferior vena cava. Now, the reason—throughout his life Mr. Pollock remained an invalid and had to wear elastic supports, the renal veins were also

(Testimony of C. H. Horst.)

occluded, but communication between the renal and subperitoneal veins opened up, the kidneys, however, never working as in health." Now, Mr. Hennessey had this body fall on him 120 pounds, from eight to 10 feet above him, and I conclude that these veins became terribly distended by the pressure of this man falling on his shoulder and back, and causing distension of both aorta—this is the aorta (indicating on chart)—and vena cava; and the aorta being a very strong, powerful vessel, as is also the vena cava, but of the two, the least to withstand this pressure would be the vena cava, and I think he had this force go down in this vena cava. I think the vena cava was completely full of blood at the time, and I think the pressure was so great that it interfered, causing a crack in the intima, it caused a general contusion of the lining of the lower portion of the vena cava, including a portion of the upper portion of each of the iliac veins, so, when these plateleta thrombocytes went from the blood to seal that injury, it built up these lymphocytes and leukocytes that gradually built up until he had a thrombus that occupied the bifurcation of this vena cava, and [285] some of the clot went in the left iliac vein, and some in the right, and when that boy got out of bed, those clots broke, and that explains why he had a thrombus, why he had this subsequent trouble in his leg.

Now, let's see, if he had a thrombosis on the arterial side, it couldn't get into these veins, because as these vessels go down and then divide and

(Testimony of C. H. Horst.)

subdivide (indicating on chart), and finally get into little plexuses or capillaries, a big thrombus couldn't get through; so, therefore, if you want to figure out how he had a venous thrombus on this side—a venous thrombus in the vena cava could not come down from the arterial circulation. It couldn't be explained and neither could I explain the formation of the clot on the venous side unless I knew about the pathology there.

So, my opinion is that the man had an injury to his vena cava caused by the man who fell on him; that nature tried to cure it by piling up the proper cells that went to seal it; when Mr. Hennessey went to the hospital, he didn't know about the clot—how could he know, he couldn't feel it, he couldn't know he had it. The only thing he knew he felt this pain in his groin when he got out of bed, first on the left and then on the right, and so the only consequence was he had to have a doctor and he had collapsed, he had shock, and they put him in bed, and they found out his leg was swollen, certain portions of it were white, certain portions they couldn't feel the pulse. [286] They felt for that dorsalis pedis artery I told you about. They couldn't find the pulse there; they couldn't find the pulse in the popliteal artery—that I got from the history. They concluded it was an embolus that arose from the arterial side, but they didn't know—where do emboli arise on the arterial side? They come from the heart, they come from the heart, and that heart has to have a disease. Those thrombo-

(Testimony of C. H. Horst.)

cytes and leukocytes that I told you about form on the valves of the heart if they are diseased, they will deposit on there. We call the condition endocarditis, and sometimes those little deposits become very big and very fragile, and then they liberate when the heart beats, they are drawn off the attachment to the heart valves and distributed in the body, and some of them, when they go down here (indicating on chart), they come into the kidney, or into the spleen, or they might go into the legs.

So, then what else could the thrombi come from? They could come from—excepting it was the aorta that was injured, that is a very rapid flow of blood in the aorta, and if the vessels in the aorta crack, you could likewise get a deposit of thrombocytes or platelets and leukocytes. They could form there, but you see, the blood flows there so quickly, it would be wiped off and become an embolus. Sometimes if it sticks on there, it organizes and forms walls of tissue, connective tissue. Cells grow in there and establish it. It is a heavy layer. If [287] an embolus gets loose in the arterial system, it either goes down or up to the brain.

Now, then, what else could there be? I'll tell you now about the surgeons, the fellows that operate on you. Now, they operate on the pelvis, and they take out an ovary, or possibly a tube, or something. In about the 7th or 8th day, why the patient dies. What happened there, what happened? Why, these vessels in the pelvis become thrombosed the trombi got into the circulation, went right up, came up in

(Testimony of C. H. Horst.)

here (indicating on chart), to the right auricle, right ventricle, got pumped up into the lungs, and got stuck in the lungs. If that happens—of course, it would depend upon the size of the embolus, if it was very big, supposing this embolus—supposing instead of what I said—had gone up instead of going down, had gone up through this vessel—you see, here is what we call the pulmonary artery (indicating on chart)—it is made blue, but it is an artery—the blood gets aerated here, then the blood goes up through this pulmonary artery into the lungs to become aerated, then it returns, the blood does, back into the left auricle, then the left ventricle, then it gets pumped around the body. When an embolus gets into the lung by way of the pulmonary artery the embolus can't go any further because the terminae vessels won't allow it, because they are capillaries. If it gets stuck in there, pneumonia develops. If it is a big one, which this one was, it would have laid up in this pulmonary artery, and we wouldn't have this case, this fellow would be dead, because it [288] is too big. How do I determine that? By the history. How do I determine that the thrombus was in that position, that it could occur in the vena cava? By the history. This man here—it can occur—I'll tell you what they do now. Surgeons take and they put a string around this vena cava and tie it right off. It is quite a daring thing, I think; but, you see, where does the blood go if they tie it off? It has to go through collateral vessels. Some of these vessels go through, and are continued up into the

(Testimony of C. H. Horst.)

chest (indicating on chart). Your vessels, they are very superficial, they are in the walls of the abdomen; and yet others will go around the veins, the azygos veins—they are veins that go alongside the vena cava and make that communication; then there are veins within the vertebral column itself that conduct blood up, and astonishing as it may seem, they do just exactly as what this man said. Dr. Pollock lived a long time, but he was incapacitated, but the collateral circulation was established.

Now, that is my idea of this. Now, you can't explain, nobody can tell where the thrombus came from when they only think in terms of the arterial system, because it don't work that way. You can't explain it, but you do know this, that he did have a thrombus——

Mr. Angland: Is this your testimony——

The Court: You are not cross-examining.

Mr. Angland: Read the last of that, Mr. Parker.

(Last portion of answer read by [289] reporter.)

A. So, he did have a thrombus, and so his leg was injured in it, and now he has pain in that leg. May I read this complaint?

The Court: I don't think it is necessary now.

A. So then Mr. Hennessey has a pain in his leg all the time. Now, then, I think I have explained to you my idea of why that thrombus formed in this way. I have told you it was a bland thrombus; I told you in my opinion it had formed slowly for

(Testimony of C. H. Horst.)

7 months, and I told you I thought that when Mr. Hennessey got up to wash the pressure of standing erect came down, that the formed thrombus loosened and split at the bifurcation of the vena cava and that part of it went down into each leg or iliac veins.

Now, then, I will tell you about the foot. The foot is very difficult to explain because it is paining all the time, and still he has got the interference with circulation, so, I think a portion of this thrombus is gone in the leg, and that he has a collateral circulation in there now, and this circulation is better, and Mr. Hennessey, I think, is getting along wonderfully well. There is just this about it. You would say, how could the blood get through if both iliac veins were blocked with the thrombus, and in answer to that I will say that as soon as the patient was found to be in the critical condition that he was, they immediately gave him heperin and dicumarol, which I pick those out as the most important drugs, and they worked on this thrombus with remarkable results, [290] because the right leg cleared up very quickly, whereas the left didn't, but I think that that is why the man is living today, that they used those anti-coagulants to free the passage. I think that the cord—now, is it fair to ask any questions——

Mr. Angland: It will be in a minute, Doctor.

Mr. Doepker: No, give your explanation.

A. I want to talk about the trouble to the spinal cord, and I think he has—I think what happened——

(Testimony of C. H. Horst.)

Mr. Angland: I don't think there is anything in the complaint in this case about injury to the spinal cord, is there?

A. He certainly has a bad foot.

Q. You are giving your opinion about the condition of his foot, is that it? A. Yes, sir.

Q. Proceed, give your explanation of that, please.

The Court: Yes, proceed.

A. Now, when I saw the foot first, it seemed to me, your Honor, that the foot was, that probably the patient had, instead of bronchial pneumonia when he entered the hospital, he was getting over an acute attack of poliomyelitis because he had paralysis of certain muscles and his foot flexed down, and there was a difference in the measurements of the leg, and then the history showed that the temperature came down, but I have changed my mind on that. The results of anterior poliomyelitis, and the condition of thrombus that I am going to explain, the [291] results from either one would be just about the same, but when one is making a diagnosis, he should keep on with the original contention and employ that in his diagnosis, rather than introduce two different diseases. So, from this aorta (indicating), there are little veins that go out into the—they are represented here, I didn't see it at first, they are represented here (indicating on chart), and they bring the blood from the arteries, the arteries go in and then the veins come out and join and empty into the vena cava.

(Testimony of C. H. Horst.)

They go out, for instance, from the aorta, there is the aorta (indicating on chart), it goes out into the spinal cord, and then the veins come back, and they empty into the vena cava. Now, this clot, this thrombus, was right here on the lower end of his vena cava, and, therefore, when it moved down, it cut off some of those little thrombosed veins there (indicating), and it caused emboli from the thrombus to go back and lodge gray matter of the spinal cord. That interfered with certain pyramidal nerves that control the lower nerves, the lower motor neurons—it cut the lower motor neurons off from the upper motor neurons which control the lower motor neurons. Therefore, when the reflexes were tried, they were excessive, they had no inhibition from the brain via the pyramidal tracts and so the consequence was that when I tapped him on the left quadriceps ligament, it was very active, and then further it explained why that leg went into real convulsions [292] after when I was examining him once for a few seconds. His leg just contracted and relaxed time after time, and then finally settled down. Then the history shows that when Mr. Hennessey was in the hospital, his left leg would go into these contractions and his right leg would shoot out against the foot board and I think the reason for that was that the small thrombi kept invading the spinal canal through these little veins that are even with and attached to the original thrombus in the lower portion of the vena cava. Now, that would explain the origin

(Testimony of C. H. Horst.)

of the embolis from the thrombus in the vena cava, and I read that history to show it and how that was explained, the doctors in Dr. Pollock's time did not know then so much about the coagulation of blood as we do know now. They didn't know how blood coagulated. They knew how it formed, but didn't know this: They didn't know why, for instance, the blood didn't coagulate in their blood vessels when they were well, and they didn't find it out. They added this to it: They suggested an anti-thrombus ferment to be present in the circulation, and that just enough of it was present to interfere with the mechanism of the coagulation of the blood so it would not coagulate in the veins, because they would be all run over with thrombi if it wasn't controlled. Years ago a man named Hunter, he was English too, dissected a vein out of an animal and tied both ends of the vein off before he cut it off, and then he showed he could keep that blood in that vein for several days and it didn't coagulate because he didn't have enough thromboplastin in there to make it coagulate; so what I have done, I have told you about the spinal cord. When those little emboli went into the spinal cord, [293] they didn't involve the whole cord, they only involved a certain portion of it, and they destroyed certain reflexes. That would explain Mr. Hennessey's activity of his legs. Then again, they destroyed some of the anterior horn cells that supply the muscles with tonic reflexes, because some

(Testimony of C. H. Horst.)

of his muscles are partially paralyzed. So, now, I have explained why he has a paralyzed leg, where the thrombus formed; I have shown you how, in my opinion, he didn't have poliomyelitis, but I have shown you how thrombotic dissemination could destroy that nervous tissue in the cord, so that is where I stand.

Q. All right. Doctor, let me now inquire about your opinion—what in your opinion has been the effect of the record of the use of alcohol as disclosed by the St. James Hospital charts 1-B upon this condition and upon the recovery of the condition—no, that is 1-C, it isn't 1-B, it is 1-C?

The Court: You are in a rather difficult position here, aren't you, Mr. Doepker? Can you impeach your own witness?

Mr. Doepker: No, I am not trying to impeach him, your Honor.

The Court: Dr. Stokoe——

Mr. Doepker: I just want to see what extent Dr. Horst feels the damage is. We feel there is some damage. I was trying to see if he could give us an estimate of the extent of its effect.

A. Now, did you ask me the question of [294] what——

Concerning the interference with his recovery brought about by the use of alcohol, what percentage is that? Have you got anyway of determining what interference with Mr. Hennessey's recovery the use of alcohol was?

Mr. Angland: Just a minute. I will have to ask

(Testimony of C. H. Horst.)

can you give some explanation to the doctor as to the extent of the excessive use of alcohol.

The Court: Yes, if you are going to get it right down to this case, you had better outline how much alcohol was used, the extent of the use of the alcohol, over what period of time, and so forth. I should think if it has any effect at all, it would depend upon the quantity used and the time over which it is used.

Mr. Doecker: I don't believe we can give it. We will withdraw the question.

Q. Do you believe the concussion which you have described, and which was diagnosed as a cerebral concussion on September 7th, 1951—in your examination have you found anything to lead you to believe that that is still present? A. No.

Q. What is that?

A. No, how could there be any sign?

Mr. Doecker: He has none? You may cross-examine. [295]

Cross-Examination

By Mr. Angland:

Q. Doctor, take that little story that you have there, don't you like that little story by the doctor? Just read the first part of that. I believe you said that the man was a hurdler or runner?

A. He was a runner.

Q. He was a runner. He ran down to the tape and fell over?

(Testimony of C. H. Horst.)

A. Yes, he ran down and fell over, that's right.

Q. And from that time on, he remained a cripple, is that it?

A. That's right.

Q. The thrombus developed immediately, didn't it, Doctor?

A. Yes, sir.

Q. Doctor, you have stated here that from the history given to you by Mr. Hennessey, you have determined that the cause was the man falling on him at the airport in Pocatello, Idaho?

A. Yes, sir.

Q. Doctor, how severe, if you know, were Mr. Hennessey's injuries out of the automobile accident?

A. How severe it was?

Q. What were his injuries in the automobile accident?

A. He had a contused right shoulder.

Q. Anything else?

A. No.

Q. To your knowledge? [296]

A. Not according to my history. That is the one—it was done, the injury to the right shoulder, it was done at the time when the automobile turned over and over.

Q. According to your history, Doctor, he injured the right shoulder in the automobile accident down by Toston?

A. That's right.

Q. The right shoulder was again injured in the airport at Pocatello?

A. That's right.

Q. The injuries, so far as your history is concerned, were similar, weren't they?

A. They were.

Q. The medical treatment—you were here when

(Testimony of C. H. Horst.)

Dr. Soltero testified—the treatment for the two, and the recovery seemed to be about the same?

A. I wasn't here, sir, but if he said it was about the same, it was. I mentioned when I discussed the shoulder that the shoulder injuries were very long lasting. Mr. Hennessey stated he was over it in six months. Usually it takes much longer than that because of the peculiar formation of the shoulder, but the shoulder was not concerned in this, it was simply the accessory injury he got when the man fell on him, but I don't associate it at all with the thrombus.

Q. Doctor, you have regard for the doctor who attends the patient immediately after the [297] injury?

A. I certainly have, I think he ought to know more about it than I do. I can't help it if he thinks it is on the right side and I think it is on the left, but you must consider he doesn't know it——

Q. You don't know it either, Doctor?

A. I know it because we do have a thrombus. Which side would you put it on? Put it on the arterial side where it can't get through, or put it on the venous side where it stays, where it stayed?

Q. Of course, I am not qualified as a physician and surgeon and don't pretend to be.

A. I am trying to get that over, why it was on the left side. I related this little history because it was very short and to the point. It shows it was on the left side because he held his breath after running.

(Testimony of C. H. Horst.)

Q. Doctor, that man fell over immediately, didn't he. A. Yes.

Q. Does that indicate to you that that story might have a material variation from the facts in this case, wherein Mr. Hennessey stated that the man fell from the ceiling on June 2nd, 1949, and we find no sign of any blood clot until January 7th, 1950, is that a material variation in those two stories?

A. No, because I figure this way: The doctor dropping, I brought that in for the purpose of showing how a thrombus could occur. It doesn't state how long it was before they discovered it was a thrombus of the vena cava. [298]

Q. Doctor——

A. Wait a minute, now. This man, when he fell on Mr. Hennessey, he didn't know that he had any thrombus, and he didn't have any symptoms of it, and he wasn't knocked out; and I explained it took many months for that thing to build up, and I showed how those cells kept building up on the thrombus where it originally started until it got to be a very big thing. Then when he went to the hospital seven months afterwards, and he went for that bronchopneumonia, which he was recovered from in a few days and the doctor told him he could get up, that had seven months to develop, and when that came down, Mr. Hennessey went out, he just lost consciousness. You can't build a thrombus overnight.

Q. Doctor, it has taken you quite a statement to

(Testimony of C. H. Horst.)

give an answer to my question. Is there a material feature to consider that would differentiate the story you have read and Mr. Hennessey's case, wherein the injury occurred several months prior to the time the blood clot showed up?

A. Yes, there would be this factor——

Q. Is that factor a material difference, Doctor?

A. Well—is that factor a material difference? The only significance of it is that when the man ran, he held his breath and developed a tremendous pressure in his arterial vessels, and they were so distended with blood that he afterwards developed this thrombus, whereas, Mr. Hennessey, he didn't know it, but when this man fell on him, he had a like increase of pressure in his vessels, because this thing was of lightning—it only took a few seconds to fall down, but if ever you have tried to lift a body that was 120 pounds in weight yourself, unless you were a trained man, you would find it was awfully heavy. They are the heaviest things I ever saw. When they fall, they fall with greater force than 120 pounds. That came down, it dilated all the lungs, the lungs came down, the diaphragm came down, the intestines came down. That contused the interior of this vessel and split it, but not in one place, but in many places.

Q. Doctor, the pressure came down. How long did that pressure last?

A. I wouldn't say but only a few seconds.

Q. Just a few seconds?

A. Yes.

(Testimony of C. H. Horst.)

Q. I suppose if it would cause the vena cava to expand with the pressure, could it have caused the aorta to expand too? A. Yes, sir.

Q. Then, the thrombus may have developed in the aorta, is that your opinion?

A. My opinion is just the reverse.

Q. May it have done it, is that a possibility?

A. Yes, that is a possibility, but I don't think it did in [300] this case, and I think if these two vessels, the aorta and the vena cava were both distended with blood and a big pressure put on them, the vena cava would be the one to contuse or split before the aorta. Why? Because it is a much stronger vessel than the vena cava. It is a strong muscle and has a great deal of elastic tissues in it. So has the vena cava, but the vena cava is the smaller one. I think it would give first.

Q. In the story you read, Doctor, the man hit the tape and he fell. Now, Mr. Hennessey had a pressure from the man falling, assuming he fell in the fashion you imagine—there is a conflict in the evidence here on that—assuming he fell with his full weight on the shoulders so he caused this caving condition you are talking about, that is when the expansion took place, isn't it? A. Yes.

The Court: Let me interrupt. Is this opinion you have given, Doctor, based upon the assumption that he fell, that when he fell, he hit upon Mr. Hennessey's shoulder straight, the 120 pound weight?

A. Yes.

The Court: By a direct blow?

(Testimony of C. H. Horst.)

A. Yes, sir.

The Court: And your opinion is based upon that? A. Yes, sir. [301]

The Court: I think it is obvious that the cross-examination is going to take some time, and as I have been advised we probably will not have to try a case before the jury Monday. Court will stand in recess until ten o'clock Monday morning. [302]

C. H. HORST

recalled as a witness on behalf of the plaintiff, having previously been sworn, testified as follows:

Cross-Examination

(Continued)

By Mr. Angland:

Q. Dr. Horst, when we suspended Saturday, I think I had inquired of you concerning the little story you had read from a book written by Dr.——

A. Treves.

Q. ——Treves, yes. You referred in that story to a runner who had come up to the tape and dropped over. A. Yes.

Q. And was a cripple the rest of his life. Now, I inquired of you as to whether or not the fact that that runner dropped over immediately differentiates that example considerably from the situation with respect to Mr. Hennessey in this case, who did not develop the thrombus, or not the thrombus, the blood clot, until approximately seven months after

(Testimony of C. H. Horst.)

the alleged accident. Doesn't that make the two situations very different, Doctor? [306]

A. The situations are different. In Mr. Hennessey's case, the question that puzzles everybody that examined him, puzzled me, was the source of the embolus, and I introduced that story here, the history of that runner, to show how the embolus could arise in the inferior vena cava. The conditions were not parallel except that the runner exerted pressure on his vascular system when he ran, and he had in addition an accelerated pulse, which also raised his pressure in his vascular system.

Q. Couldn't he, as a matter of fact, have developed what you in the medical profession refer to as alkalosis?

A. I never considered alkalosis in my life. I presume it is alkalinity of the blood, but it doesn't concern me in this case.

Q. You don't think it might have been the situation in the case of the runner?

A. I haven't considered it. I was trying to explain to you, sir, in answer to your question, so when this man ran, he held his breath, when he ran, his heart beat fast, so he had a pressure on his vascular system, and after it was developed that he had a thrombus of his vena cava. Now, our man, Mr. Hennessey, he had a pressure on his vascular system, but it came from an external force, the man's body, for instance, falling on his body, and that caused an increased pressure in the veins; so, the principal reason that I introduced the [307]

(Testimony of C. H. Horst.)

history was that it is so very difficult to find in the medical journals just why or how a thrombus can form in the vena cava when the ordinary course for a thrombus is to occur in the heart, for instance.

Q. Yes.

A. You see, now, then, the pressure that came down on Mr. Hennessey from the body landing on him caused a pressure in the aorta and in the vena cava. Is that an answer to it?

Q. The runner, if he didn't develop alkalosis, developed, rather than a thrombus, he had a clot that formed immediately and caused damage immediately, isn't that right?

A. I told you I know nothing about alkalosis causing any thrombus. That is far fetched.

Q. I am not asking about alkalosis now, I am asking about an embolus, if it was an embolus?

A. Yes, sir.

Q. He suffered from that immediately before it became a thrombus?

A. The way that I understand—the reason again, I will say to you, that I introduced that special history for the reason to show you that the thrombus can form in the vena cava without originating in the arterial system. That was all that was introduced for. Now, then, I would like to go now and tell you how it happened here.

Q. Let's see if we can get on with this, Doctor. Maybe we [308] can get on with it this way: The embolus or blood clot, if it is formed by a blow of

(Testimony of C. H. Horst.)

any kind, immediately causes injury. If it doesn't immediately cause injury, it attaches itself to the vessel wall, is that right, and becomes a thrombus?

A. That's not quite right.

Q. Tell us how it is then?

A. I'll tell you what it is. Now, then, the injury occurs, and the blood vessel is injured, so what happens? The blood vessel has to split somewhere, it has to have an injury, so that the serum from the tissues has to exude, a thromboplastin, and this thromboplastin attracts to it the blood cells from the blood, and then they go over this rupture in the vena cava and seal it off, exactly as when you have an injury to your hand, you skin your hand. There is a fibrinous exudate, and the next thing, if the thing don't happen to get infected, you get a scab. That is the process you have to go through to form a thrombus in the vena cava. You can't have a thrombus in the vena cava develop in the blood itself. It first has to have some thromboplastin. If you didn't have thromboplastin in the blood, why the whole body would become consolidated in a clot.

Q. Doctor, you said that the pressure from above caused an expansion of the aorta and the vena cava?

A. Yes, sir.

Q. It is your theory that there was a cracking of the [309] internal walls—so that we will understand it, it amounts to a little cracking of the internal walls of the vena cava?

A. Yes, sir, that's right, only I would say it is impossible to determine whether it is a little crack

(Testimony of C. H. Horst.)

or multiple cracks, and then contusions of the interior of the wall of the vena cava. You see—that is the answer, isn't it?

Q. I think so, Doctor. Now, Doctor, these blood vessels, the aorta and the vena cava, are rather heavy walled, muscular blood vessels, aren't they?

A. They are, but there is quite a difference in them.

Q. Yes, the aorta is much heavier?

A. Yes.

Q. They are somewhat flexible?

A. The aorta is well supplied with elastic tissue and with muscles, and, therefore, it will stand considerable expansion. The vena cava, on the other hand, does not contain very much elastic, nor it does not contain very many muscular elements. It has a limited amount of expansion.

Q. You could even, I suppose, compare the two of them to a rubber hose, one being a heavier, more elastic hose than the other?

A. That's right, you could.

Q. Doctor, when you get the pressure you speak of on the aorta and vena cava, the smaller arteries and veins would break much more readily wouldn't they? [310]

A. Would they break? No, they wouldn't break, but if that came down, if the pressure, assuming that the pressure, that the man gets hit on the shoulder and down the pressure comes in the vena cava and aorta right away. You will notice that this left iliac vein (illustrating on chart)—the com-

(Testimony of C. H. Horst.)

mon iliac vein goes from the bifurcation of the vena cava. The left iliac, it goes to the left and then down, the right iliac vein goes obliquely down, more direct by far than the left does, so that is supposed, is classed by people who studied this, that that is obstructed from the pressure that comes down. I call your attention to this common right iliac artery that crosses the right common iliac vein. When that pressure came down, the pressure was increased both in the vena cava and the aorta. That aorta, being a very strong and powerful vessel, pressed in on the right common iliac vein. The vena cava, you see, bifurcates here into the right common iliac vein and the left common iliac vein. I showed you the left common iliac vein goes obliquely outwards, whereas the right common iliac vein goes straight down and out. Now, to get back to this artery, this right common iliac artery——

Q. Doctor, aren't we drifting along some distance from the question?

A. No, these are very important things to know.

Q. We are interested in knowing them, but right now we are interested in having you answer my question, and I think the [311] Court is. The arteries, the small arteries that lead from the aorta, and the veins that lead into the vena cava are more susceptible to damage than are the aorta and vena cava, is that right?

A. No.

Q. They have heavy muscles surrounding them?

A. Those little veins, they are very small, and

(Testimony of C. H. Horst.)

the pressure goes right by. It is like a little stream of water going into a big stream, the big stream carries it along. The pressure will naturally go along the largest vessels.

Q. It wouldn't force, as it came along the larger vessels, it wouldn't force the blood out into the smaller vessels and cause them to become damaged more readily than the large muscular vessels?

A. I don't think so, I think the pressure would follow the course of the larger vessels. I thought those little veins you speak of were involved at the time when Mr. Hennessey was in the hospital and got out of bed and he had these thrombi in the vena cava that began to slip, and if the assumption is right that there was a thrombus in the vena cava, then the little vessels, the little veins that go from the spinal cord and empty into the vena cava could be disturbed then, because if the clot slipped, it could cut them off; then that would cause in turn a stasis of blood in the spinal cord itself, and if that blood did not circulate, then there would [312] be what we would call an anoxemia; there wouldn't be enough oxygen supplying the nerve tissue, and they won't live long if they aren't supplied with oxygen, so, I figured while the clot was forming, those little veins emptied regularly and normally into the vena cava, and were not involved when the first pressure took place.

Q. The smaller veins were not involved on the first pressure? A. That's right.

Q. It was only the vena cava?

(Testimony of C. H. Horst.)

A. You will understand that following the injury, the only thing that occurred in this vena cava was just little cracks that we were talking about. It took seven months for that thing to develop.

Q. Yes, according to your theory, you had these little cracks in the internal wall of the vena cava that built up what you call a thrombus?

A. Yes, thrombus, that is a thrombus.

Q. Does that just build and become a little bunch or lump in there, or does it continue to build?

A. Well, sir, it continues to build. The first thing that happens in the formation of a clot is the crack in the intima, the lining of the blood vessel. When anything cracks, it usually bleeds. When cells bleed, they have thromboplastin, and then that attracts the platelets and white corpuscles to the place where it is cracked because it has this [313] enzyme thromboplastin, and those cells keep building up and building up, but you see, the point is that they don't take one place, but they take many places, because when that pressure came down, it had the obstruction to the vena cava I explained, and I think this vena cava ballooned somewhat because of the obstruction caused by the artery pinching the vena cava, the left iliac vein. You see, if the pulsation comes down, it pinches it there (indicating on chart), and that caused a backing up of blood in here. From the blood with those thrombocytes I explained the thrombus formed. One can't tell if there was one crack. If there was one crack, it would be as you figured it out, it would be on one

(Testimony of C. H. Horst.)

side, but it could be forming on all sides and progressing down into the vein on each side, and how could anybody tell really what was the nature of that thrombus.

Q. The difficulty is nobody can tell what did happen in this case, that is the difficulty, isn't it?

A. The only thing we know, and everybody concedes, it was a thrombus, and the man got out of bed and there was some slipping——

Q. And the embolus went down into the left leg?

A. Yes, and the reason it seems to follow so nicely according to my way of looking at it, the left leg was the one that gave the greatest obstruction, so the pressure caused probably considerable injury in this left common iliac vein, because [314] the left leg is involved most, and the right leg healed up so promptly with the administration of that heperin that he was relieved of that almost at once.

Q. Doctor, your theory is that the embolus flowed, so to speak, upstream?

A. Yes, that looked like an objection.

Q. Isn't that your theory?

A. It should flow upstream.

Q. Because the blood from the legs that comes into the vena cava is coming up?

A. You are quite right.

Q. But your position is that the embolus fell off here (indicating on chart), and went down into the left leg?

A. That's right.

Q. Against the stream so to speak?

(Testimony of C. H. Horst.)

A. That's right, and that brings up my story, that brings up what I tried to get over, that those emboli do form in the vena cava. They don't come from anywhere else except from the wall of the vena cava, and that took in this case seven months to build it up. It formed quite a clot in there. The history shows the clot couldn't go up, it was attached to the walls. Then, when he was in bed four days, it loosened up. That could have happened when he was going to his office that morning.

Q. Doctor, your theory is that there were multiple cracks, [315] so that we will understand it, in the wall of the vena cava?

A. That's right, in the intima.

Q. That built up a thrombus? A. Yes, sir.

Q. And to the extent that it completely filled in?

A. It might be almost complete.

Q. The vena cava?

A. Yes, sir, and the blood might have gone alongside there. It was a very heavy clot. When it got loosened, it had to go somewhere. It broke off and went right first and left secondly.

Q. When you speak of occlusion, you mean that the thrombus built up in there and shut off the flow of blood of the vena cava?

A. Yes, it was shutting it off each day.

Q. Of these seven months?

A. Yes, building up seven months. Of course, he didn't know when he had those little cracks in there. He had no sensation. He walked around and didn't even know what happened. If that thing had oc-

(Testimony of C. H. Horst.)

curred to him and nobody had fallen on him and he came home in the airplane and the clot would have slipped, he would have the same effect as now.

Q. It didn't happen then, so we don't know when the clot formed or where it formed?

A. All we know is this: There can be a clot form in the [316] vena cava.

Q. That is possible.

A. We have explained why it did. If it did. If it can form there as it did in this runner, why couldn't it form in Hennessey? If that is a fact, then when he has the clot formed, all at once it loosens up and strikes the right and left leg, paralyzes them. It shocked him. It was an awful shock. He didn't know where he was. He was all right. He was able to get up that morning. All at once it came on. He didn't get a shock when it started——

Q. Let's see if we can figure this out, Doctor. The theory that you have is that the thrombus began to form here (indicating on chart)?

A. Yes, sir.

Q. In a matter of seven months, wouldn't that thrombus be such that it would completely fill the vena cava—now, just a minute. Am I correct in this: If a thrombus begins forming on the wall of either the artery or the vena cava, it doesn't just grow and stay like a little ball here, does it? The cells keep building up until they completely block off the vessel, isn't that right?

A. That's right.

(Testimony of C. H. Horst.)

Q. Then you have your auxiliary vessels taking over?

A. The collateral vessels, yes, sir, collateral circulation will be established. [317]

Q. How long, in your opinion, Doctor, would it take for the vena cava to completely close off when you have a thrombus begun?

A. Well, how long? I can't tell you how long; it lasted here seven months.

Q. How long does it take to close it off?

A. You see, supposing—I will answer the question. I don't know how long. It depends on the individual, and it depends on the extent of the tears that occur in the intima of the blood vessel, and it depends upon the amount of thromboplastin thrown out in the vena cava, and the thromboplastin furnished by the platelets and corpuscles. If there was just a little scratch, for instance, and just a little thromboplastin was thrown out, these platelets would seal it up and the corpuscles would stick on and the thing could be absorbed, and nothing would happen to it, but if he had multiple contusions to his vena cava and multiple cracks in the intima, then there would be more thromboplastin and more leukocytes thrown out, and the thing would keep on building up. You know platelets build up thromboplastin, too, to help in sealing up the vena cava. That is the way the thing formed. That man ran around for seven months. He didn't know he had anything wrong. How could he know? It

(Testimony of C. H. Horst.)

didn't give him any sensation, it was in this big vein, and all at once it came off like that.

Q. Doctor, is it your opinion that the thrombus completely [318] filled the vena cava?

A. No, I don't think it completely filled it so the blood couldn't circulate. The man right away would have a dilation of the pelvic blood vessels. Blood couldn't get through, so it would back up.

Q. That is what we are getting at.

A. I was telling you. I am glad to arrive; now, we will get on.

Q. What I am getting at, Doctor, as the thrombus built up in the vena cava, you begin to shut off the flow of the blood upward through there?

A. That's right.

Q. And you start getting the pressure you are talking about to hold the blood back down, wouldn't you?

A. Yes, below the thrombus. It couldn't go up so well, so around here and here (indicating on chart), you have some collateral vessels that develop collateral circulation all this time. If the blood was all cut off by the thrombus, then the veins that the blood carries up through in the extremities in, it would be backed up and the veins would be enlarged.

Q. It begins to back up?

A. Down, this way (indicating on chart).

Q. I stand corrected. It begins to back down into the lower extremities?

A. That's right. [319]

(Testimony of C. H. Horst.)

Q. When it does that, you get some swelling?

A. Yes, you get swelling of everything. You get swelling of the tissues of the leg, and you get dilation of the veins, and you get enlargement of the arteries.

Q. It wouldn't be too long after the thrombus forms in the vena cava, it wouldn't be too long before swelling begins in the lower extremities?

A. That's right, something would happen.

Q. Have you examined the hospital chart for Mr. Hennessey in November, 1949? Did you find from that chart any swelling of the lower extremities?

A. November of?

Q. November of 1949. You may look at the exhibit. I think he was in the hospital with pneumonia at that time.

A. That is the beginning of this trouble when he had pneumonia.

Q. That's right. We want to find out about swelling in the lower extremities. You say that would happen.

A. I don't see anything in here about that. Show it to me.

Q. I am not very good with those charts.

A. You can't do any good with them, except the nurses' report and a rapid summary of the doctor. They don't go into the thrombus. They say it is a thrombus, but don't know where it arose from. That is all I get out of this history.

Q. I am confining this to November, 1949, when Mr. Hennessey was in the hospital by reason of an

(Testimony of C. H. Horst.)

infectious condition in his lungs and about his larynx.

A. November, 1949, "I had a severe attack of laryngitis. I couldn't talk, confined to St. Vincent's Hospital four days. I made complete recovery." That is my notes on it.

Q. Yes. Doctor, look, please, at Defendant's Exhibit 1, and particularly the portion thereof that is identified as 1-A, just the record of hospitalization in November, 1949, and do you find in that record when he was being hospitalized any record of a swelling of the lower extremities by reason of the forming of the thrombus in the vena cava that you have been talking about?

A. No, I don't, because I looked at this thing and I didn't see anything about it.

Q. You didn't find it there, Doctor?

A. "R. of abdomen pains." What does that mean?

Q. I don't know.

A. Nobody can read my writing, but I can't read theirs. I saw nothing in this history—I looked it over—to indicate there is any venous involvement whatsoever.

Q. That's right. You found nothing in the history to show that by reason of the thrombus developing in the vena cava that there was swelling in the lower extremities, did you? A. No.

Q. That tends to disprove the development of the thrombus in [321] the vena cava, doesn't it?

A. Why does it disprove it?

(Testimony of C. H. Horst.)

Q. If you had a thrombus developing in the vena cava, and as you shut off the flow of blood upward, you stated you would have a swelling in the lower extremities, isn't that right?

A. That's right, but in November, 1949, that thrombus was just beginning.

Q. Just beginning then? A. Yes.

Q. I thought it began in June of 1949?

A. It was November. That is when he had——

Q. That is when he had pneumonia.

A. The thrombus formed at the time the man fell on him.

Q. If you are talking about a thrombus here that developed in November, that has nothing to do with this accident?

A. Oh, forget that history. The accident in Po-catello was June 2nd. That is when the man fell on him. That is what I am trying to correlate the thrombus with. If what happened in November, if he had any swelling in November, that could be possible, but he didn't have any **bothering him in** November because I went through that carefully.

Q. You have gone through the hospital records and find no history of swelling of the lower extremities by reason of the development of a thrombus in the vena cava?

A. That's right, not any swelling of any leg.

Q. Then, Doctor, that does tend to show there was not in [322] fact a thrombus in the vena cava, doesn't it?

A. No, it hasn't taken long enough. It took seven

(Testimony of C. H. Horst.)

months for that to form. He got injured June 2nd, and he went in the hospital in November. The thrombus didn't develop until January 7th.

Q. It didn't develop——

A. It didn't say hello until January 7th. He had no trouble with his legs until January 7th.

Q. Doctor, I understood you to say it was developing from June 2nd, 1949.

A. You understood correctly, but it wasn't giving any symptoms. The man didn't know he had it. It wouldn't have had any relationship to this accident if it hadn't been for the man falling on him at that time.

The Court: It seems to me you are discussing two different things, both of you. What counsel wants to know is if there was a thrombus on the vena cava formed on June 2nd, 1949, why doesn't there appear in the hospital records that there was some dilation or swelling, why weren't there some symptoms in the leg in November, or early January, 1949, or 1950?

A. Because the thrombus was not developed completely to obstruct the vena cava.

Q. There wasn't even any swelling of the lower extremities upon entrance into the hospital January 3rd, 1950?

A. From the fact—I would like to have you tell me where was [323] the swelling in this history.

The Court: Doctor, you see you are the expert.

The Witness: Yes.

The Court: You are not to question counsel, you

(Testimony of C. H. Horst.)

are to answer his questions. Let's get along, and let's direct the answers to the questions, then if you have got an explanation, later Mr. Doepker can question you and get it cleared up. We have been here now 40 or 50 minutes and we haven't covered very much. Let's make a short answer to these questions wherever possible.

A. There could be a slight swelling in the leg, but it wouldn't be due to a thrombus in the vein.

Q. Did you find in the hospital record of November, 1949, any swelling of the lower extremities by reason of the fact of what you say is true, the thrombus developing in the vena cava would cause a swelling. Was there any swelling in the lower extremities in November, 1949?

A. I don't know.

Q. Did you look over the record?

A. I looked over the record; I didn't see it. It didn't strike me if it is there.

Q. You have said that a thrombus developing in the vena cava does cause swelling in the lower extremities?

A. That is true, it certainly does. [324]

Q. Four days before the embolus showed up, January 3rd, 1950, Mr. Hennessey was admitted to the hospital, that is, on January 3rd, 1950. Did you find any notations in any of the hospital records to show that there was swelling of the lower extremities at that time? A. No.

Q. There is no record of that? A. No.

(Testimony of C. H. Horst.)

Q. As a matter of fact, the first you find is on January 7th, when the embolus broke loose?

A. Yes, sir.

Q. And you say the embolus, so to speak, flowed upstream to the lower extremity, the left leg?

A. Yes, sir, I explained it much more in detail than that.

Q. In any event, that is what happened? The normal flow of blood in the vena cava is upward into the heart?

A. It is.

Q. It doesn't carry downward?

A. That's right.

Q. The aorta carries blood downward?

A. That's right.

The Court: Does an embolus ordinarily follow the blood stream, or does it ordinarily go against the blood stream?

A. It depends where it comes from. If it is detached, for instance, from the heart valves, it flows with the blood that [325] would be the arterial side. It flows downwards. If the thrombus appears in the venous side, it is difficult to explain it because the blood flows up in the venous side, it doesn't flow down, but Hennessey's, when it formed, it was very heavy, very heavy. It involved the whole lower vena cava to some extent, that is, the right and left iliac veins, and the thrombus after seven months was heavy and was attached to the walls. When he was in the hospital, it loosened, and being heavy, it gravitated down and choked the veins off.

(Testimony of C. H. Horst.)

Q. Doctor, it doesn't drop like a marble would, does it?

A. No, sir, if it were a little thrombus, it could be carried up and would lodge in the lungs.

Q. Ordinarily it would be carried with the blood stream?

A. But the point is, how does the embolus get in there?

Q. Let's stay with this question. An embolus ordinarily follows or will follow the course of the flow of the blood?

A. That's right.

Q. That is the situation? You don't get an embolus that just drops through the blood vessel like a marble?

A. Not unless you had the arterial side. Supposing it was a thrombus on the valve of the heart and it was on the aortic valve. When the heart beats, it sweeps that off. It would go down in the arterial side, it goes down.

Q. Doctor, a thrombus, as a matter of fact, consists of a good deal of scar tissue, doesn't it? It attaches and becomes [326] just a part of the wall of the blood vessel?

A. That is on the assumption that the thrombus was formed including red blood corpuscles and these platelets and puss cells I described, but the thrombus on the venous side is called a bland thrombus and is not so highly organized as a thrombus would be growing on the heart valve for months. It is a swifter thrombus, and that is why—that is the difficulty in this case, trying to find out where the

(Testimony of C. H. Horst.)

thrombus formed.

Q. Yes.

A. The thrombus formed because of the pressure that was exerted on his entire system when he was hit on the shoulder and back, and in forcing that down, it had these obstructions I described. Little thrombi developed, and as they grew, they grew to a considerable size after nine months and begin slipping.

Q. What are the hard or swollen substances in the abdomen that would crush against the vena cava to cause this cracking, as you call it, or tearing? Is there anything in there?

A. This is all: When this artery (indicating on chart) full of blood came down, it crushed this left iliac vein and it obstructed the blood that was also forced down on the vena cava side, and, therefore, it did and could injure the intima of the vena cava and iliac veins.

Q. It is possible, isn't it, Doctor?

A. It is the likeliest thing in this case. There is nothing [327] else in this case to form that thrombus.

Q. You are in complete disagreement with the analysis of your brother doctor?

A. Please don't tell me——

Q. You heard the other doctor testify?

A. All I could get out of it was he couldn't give you the source of the embolus.

Q. He didn't know.

A. Yes, but I am trying to establish it here.

Q. He consulted with some 40 doctors——

(Testimony of C. H. Horst.)

Mr. Doepker: We object——

The Court: Sustained. It is not a question for Dr. Horst to explain some other doctor's knowledge or lack of knowledge.

Q. Doctor, as the thrombus developed in the vena cava, I think you said there were collateral or ancillary veins that take over? A. Yes, sir.

Q. Did that happen in Mr. Hennessey's case?

A. Well, it didn't show on the surface of the body.

Q. Wouldn't it show on the surface of the body if the collateral veins take over from the vena cava? Doesn't it show on the surface of the abdomen?

A. It does if it continues long enough. If this thrombus had organized the way you had in mind in your question, and it had organized, that is to say that cells had grown into [328] the thrombus and it had attached itself firmly, this collateral circulation would have been established; but I dare say that it was in the process of formation, but the veins hadn't become distended enough, or the collateral circulation hadn't been established enough to see it on the surface of the body. The collateral circulation consists of veins that not only extend through the walls of the abdomen, but they likewise develop on these azygoes veins that go alongside the vena cava, and they also drain through the spinal cord.

Q. Dr. Horst, if the vena cava has a thrombus that has caused an occlusion, a shutting off through there, wouldn't the collateral veins show on the

(Testimony of C. H. Horst.)

abdomen, wouldn't they be apparent to the naked eye?

A. Not unless the occlusion was complete as it was in that runner, but the blood was certainly circulating alongside of that thrombus in the vena cava right up to the time the man had that accident happen. It was going on the side of it, it wasn't a complete occlusion. The blood was circulating in there, else he would have had just the thing you are talking about.

Q. What percentage, in your opinion, of the vena cava was shut off by reason of this thrombus?

A. Well, I am of the opinion that it was shut off about—it wasn't shut off, it was partially obstructed from the bifurcation, it might be, up to about three or four inches. [329]

Q. Three or four inches?

A. I would expect it there if I was to do an autopsy on him; I would look for it there.

Q. What percentage of the flow of the blood through the vena cava was cut off by reason of that?

A. I think it all got through.

Q. It all got through? A. Yes.

Q. You wouldn't have any using then of the——

A. Complete obstruction, no.

Q. You can't, then, believe that you used the collateral veins at all?

A. It will have to develop. I dare say there was moderate obstruction, but there was no obstruction to develop these collateral veins. You can see them in bodies that have that, but they weren't there. I

(Testimony of C. H. Horst.)

couldn't say it wouldn't happen in some bodies, but it wasn't in Mr. Hennessey's.

Q. I understood you yesterday to talk of an occlusion.

A. Occlusion and partial occlusion—I am explaining now there wasn't complete occlusion because if there would have been, he would be completely paralyzed; he would have been notified of this well before it happened. We didn't have no symptoms of it until the time it happened.

Q. There wasn't a symptom you can find a trace of to show it was in the vena cava, that there was a thrombus in the vena [330] cava?

A. That's right.

Q. There wasn't one symptom any place?

A. No, I didn't find it.

Q. How long, Doctor, does it take a thrombus to develop in the vena cava?

Mr. Doepker: I am going to object to this because it is repetitious. He went into that before.

Mr. Angland: He didn't answer it, your Honor.

The Court: I will overrule the objection. Answer.

Q. How long does it take to develop?

A. Nobody knows. It took seven months in this case. I have never seen a case like that.

Q. You have never seen a case where it took seven months?

A. I have never seen a thrombus of the vena cava, except I told you I looked all through the

(Testimony of C. H. Horst.)

literature for it. It is the only little history I found about it. I found it described by the surgeons about thrombi, emboli coming from the pelvic veins going up through the vena cava into the lungs, and I have read their articles where they have described obstructions of the vena cava, but I myself—and I have attended many clinics, but I have never seen anybody describe it. I have seen one where the superior vena cava was described. They are very rare cases. I answered it, seven months.

Q. Doctor, at no time does the growth just stop? If you [331] have a thrombus begin to develop on the wall of the vena cava, it attaches itself, it becomes a part of the wall of the blood vessel, isn't that right?

A. Providing it is organized, providing that the cells grow from the wall of the vena cava into the thrombus, but if it sticks on there by reason of thromboplastin, it is not securely attached to the wall, and therefore it is more liable to get in the circulation one way or another. If it was a little thrombus there, it could be swept up, but it was a heavy thrombus. Why do I say it **was heavy, I never** saw it? I'll tell you why it was: Look at the damage it caused.

Q. You never saw it and can't find any symptoms of its existence before January 7th, 1950. Now, it continued to grow. If there was a thrombus in there, it wouldn't just become dormant in there, it would continue to grow all during that seven month period?

A. That's right.

(Testimony of C. H. Horst.)

Q. What, in your opinion, is the normal time for a thrombus to grow sufficiently to fill the vena cava?

A. Well, I don't know. It might be seven months, and it might be two years. If it took a long time, there would be a very well established collateral circulation, and the doctor in attendance would see it, like there were varicose veins on the man's abdomen or his chest going up into the neck. When those developed, the man, or the doctor would say, "We have got an obstruction here some way because this is collateral circulation," but in this particular case it developed rather rapidly and must have loosened up at the time he was in the hospital. January 7th when he got out of bed, he says, "I got this pain." It is just as characteristic as it can be of a thrombus slipping.

Q. It is so large it slipped against the flow of the blood?

A. That's right.

Q. Doctor, do you have an explanation of why it did not stop say at the knee, where the vein, as it goes down, tapers and becomes smaller, doesn't it?

A. Yes, it would get stuck in there, and that is why he has pain in his leg. I have no doubt some fragments did go down. He has terrific pain in his leg, and it is not explainable in any such thrombus.

Q. What would occur now, Doctor Horst, if that large thrombus dropped, as you say, against the flow of the blood, down to just above the knee, what would happen from there down?

A. The leg would swell, it would get black and

(Testimony of C. H. Horst.)

blue and the thing would happen just as the history states did happen. He would be shocked, he would be unconscious, and the doctor would rush around to see what he would do to loosen up that circulation. Naturally, he would give heparin, elevate the leg, and try to see that circulation is established.

Q. Why did the doctor give heparin? [333]

A. Because he thought it was a thrombus.

Q. Now, the heparin didn't dissolve this embolus, did it? A. It did wonders on this leg.

Q. Answer my question.

A. You asked if heparin would dissolve the embolus. The right leg was involved only 24 hours. The whole damage was in the left leg and has not stopped yet.

Q. Doctor, is it a fact that heparin and other medication that was given have the effect of preventing further coagulation, but do not dissolve either the blood clot or the scar tissue that has been formed and become a part of the thrombus?

A. I don't think there has been any scarring in this. Had there been scar tissue, it would not have slipped because then it would have been a part of the arterial wall. If it has got connective tissue in it, why then it is part of the wall, and it won't slip.

The Court: We are getting off into a side issue. I would like to inquire now does heparin dissolve emboli?

A. It has that effect, yes, sir.

The Court: What do you mean? Does it or doesn't it?

(Testimony of C. H. Horst.)

A. It does.

Mr. Angland: To understand that, I think you have to have an additional explanation.

The Court: It may be, I don't know.

A. When they give it, it clears the blood vessel walls as [334] it did here.

Q. Doctor, an embolus ordinarily—let's forget this one—an embolus ordinarily consists of the scar tissue that has formed and become a part of the vessel wall, isn't that the usual embolus, or it is a blood clot that is formed immediately, it is one of the two?

A. The first thing formed is the special cells I have been describing here this morning, and they are attracted to the wall of the vena cava by reason that there is a thromboplastin, and those little cells plug that up. It is Nature's way of stopping hemorrhage.

A. An ordinary thrombus attaches and cleaves right to the blood vessel wall and in effect will eventually become just a part of the wall, won't it?

A. Provided connective tissue grows into it from the wall. Where would a clot get any connective tissue if it didn't grow from the wall? That is what we call an organized clot. It didn't happen here. He would have had an obstruction of his vena cava and his legs would have swelled, and the diagnosis would have said, "Complete thrombus, vena cava," and they would have to go in after it. This clot was just a soft clot.

Q. It was a soft clot?

(Testimony of C. H. Horst.)

A. It was attached to the wall very frailly.

Q. It was attached to the wall very frailly? [335]

A. Yes, it wasn't with scar tissue.

Q. It happened to hang there and the blood flowing up past it didn't bother it at all until suddenly it dropped off?

A. Yes, because the contusion of the wall of the vena cava was so great that the thrombus was extensive. It involved not only the lower two-thirds of the vena cava, but the right and left iliac veins.

Q. You didn't get any occlusion in Mr. Hennessey's case?

A. It was partially occluded; it must have been partially occluded. I explained why that was, because he didn't develop any collateral circulation that was visible.

Q. Heparin and dicumarol, what are they supposed to do?

A. Dicumarol, that comes from rotten clover, and sheepmen found out their sheep were bleeding to death——

Q. I want to know the effect of the medicine?

A. It will render the blood fluid and take away the prothrombin element.

Q. It prevents enlargement of an embolus, isn't that the purpose? If you have an embolus, what you hope will happen is that it will attach to a wall and become a thrombus?

A. Yes, you hope it will be absorbed, and it does help that way. It may not be that way in the

(Testimony of C. H. Horst.)

books, but certainly and generally it does. When you get heparin, it saves the patient. The people who get heparin ordinarily have thrombosis of the heart vessels. [336]

Q. The purpose, Doctor, as you said, in the books, is——

A. It helps to dissolve and loosen up the clots.

Q. ——it helps prevent further clotting, isn't that the real purpose of it, so the embolus will have an opportunity to attach and become a part of the vessel wall? A. That's right, I think.

Q. And prevent further clotting, that is really what it is intended for, Doctor?

A. It is a portion of it. It is to help to dissolve the clot, and dicumarol helps to make the clot liquid and prevents formation of clots. It is certainly an efficacious drug.

Q. If there is any scar tissue in the clot, the heparin and dicumarol won't dissolve that?

A. The scar tissue is a part of the wall.

Q. Most thrombi have scar tissue in them, don't they?

A. They do if they are from the arterial side, but from the venous side, it is hard to find out where there is a thrombus because when it comes after operations, the common place for thrombi to develop is in the pelvic veins, and it goes on through and lands unobstructed in the lung, and the patient passes out when it arrives there.

Q. That is the type of thing you mentioned Sat-

(Testimony of C. H. Horst.)

Q. So that the occlusion then that you spoke of affecting the [339] spinal cord was actually down below the end of the spinal cord?

A. Yes, it was below it, it must have been.

Q. The spinal cord is up here in the second lumbar?

A. That is correct.

Q. So you had the effect on the blood vessels leading into the spine, but not into the spinal cord?

A. You see, the spinal cord is within the spinal canal.

Q. That's right, but the important thing, the cord ends up in the second lumbar?

A. Yes.

Q. And then you have a number of nerves coming down below, isn't that right?

A. That's right, but there is a plexus of veins within the spinal cord, there is some very complex veins. When these little lumbar veins connected with the plexus of veins that surround the equinus—that is, the horse's tail, they call it, because those are big nerves that come off of that end of the spinal cord. Now, then, that emboli could have got in that plexus of veins and ascended and gotten into the spinal cord itself.

Q. Yes, but your occlusion down here below the second lumbar region wouldn't go back into the spine, it would hit one of these nerves, so to speak in the layman's language, it would strike one of these nerves that goes to make up the [340] horse's tail that you spoke of, is that right?

A. They are inside of the vein, and they find

(Testimony of C. H. Horst.)

their way up to the cord by following the course of the veins.

Q. Now, Doctor, what I am getting at is, if you have it below the second lumbar region in a vein going back into the spine, and it strikes one of these nerves, it is going to affect a good deal more than just a foot or just a knee, isn't it?

A. It wouldn't hurt the nerve at all; if it went there, it wouldn't go into the nerve. That lumbar vein enters a plexus of veins surrounding the cord, it doesn't go into the nerve.

Q. How does it affect it? Now, as I understood you——

A. It affects it, it backs up, and when it gets into the cord, it destroys certain nerve tracts. The tract it disturbs is the tract of connecting nerves that connects the upper motor tract with the lower motor tract; and that wasn't a very extensive lesion, and the right leg became spastic. The upper motor neuron is intact. It controls flexion and the lower motor neuron. This man has lost his reflex below and he had the symptom of his foot sticking out.

Q. You don't have a nerve affected in the horse's tail, so to speak, and that would be consistent with the region here involved. So far as the spinal cord is concerned, you don't have just a nerve that might be affected that runs out like a fish line down to the bottom of the foot, do you? [341]

A. If the embolus goes up through the plexus and attacks the spinal cord.

(Testimony of C. H. Horst.)

Q. If it gets into the spinal cord.

A. If it obstructed those veins. If there is an obstruction of the intervenous circulation, as I told you before, nerve cells die, and certain of this man's muscles are partially paralyzed.

Q. Supposing it doesn't go up into the spinal cord, what would happen?

A. What doesn't go up in the spinal cord, the embolus?

Q. The embolus, it stays down below the second lumbar region?

A. If it doesn't go up, the man wouldn't have the condition of his left leg that now presents itself.

Q. It would be a very different condition?

A. He would have a good leg if it was that way. He has got a leg partially paralyzed, and it is hyper-active; the tone of the muscles is just hyper-active, it is spastic. That means that all the sensory impulses from the leg and foot go up and are turned right back without any control because of the destruction of the connecting neurons within the spinal cord.

Q. Dr. Horst, you spent considerable time you stated, and finally found this book that you thought would support the idea of an embolus in the vena cava, and that is how you arrived at the determination that that is what happened to Mr. Hennessey, is that about it? [342]

A. That is the reason I introduced the book, and that is the reason, I explained several times, I base that on. This was a very unusual condition that

(Testimony of C. H. Horst.)

developed in the vena cava, and nobody that ever comes here will be able to say anything else.

Q. Nobody that comes here will be able to say where the embolus came from?

A. That's right, unless they take this view.

Q. No doctor knows where it came from?

A. I think the book shows it could occur. There is a history from one of the best surgeons in the world. Here is a man with a leg——

Q. This book written back in 1883 says it is possible for this to happen?

A. It says it did happen, because it describes it.

Q. In that case he fell over immediately?

A. Yes, but then he fell over immediately. We are taking a view of the book that I didn't wish to be discussed. My purpose in showing the history was to show that an embolus could occur in the vena cava, that it could stick there, and there was collateral circulation. The man's life was wrecked, but he still lived. My purpose was to show emboli could develop there, and the other fellows say it couldn't because it would have to go up instead of down.

Q. Your position is that it could have happened in this case?

A. What else could it be? [343]

Q. I am not a doctor.

A. I don't accuse you of being one. What other view could be taken of this? Nobody offered an explanation of it.

Q. No one knows where the embolus came from?

(Testimony of C. H. Horst.)

A. I showed where it occurred.

Q. It is possible for it to have occurred in the manner which you state? A. It is.

Q. It is within the realm of possibility?

A. That's right.

Q. And that is your testimony here?

A. Yes, that's right.

Mr. Angland: That's all.

Redirect Examination

By Mr. Doepker:

Q. Doctor, in this instance, do you, or would you say whether or not that is the reasonable probability of this case? A. Yes, sir.

Mr. Doepker: That is all.

The Court: Nobody else has any questions? I don't want to engage in an examination of the doctor, except I do want some more information. The doctor talked about this force causing the expansion of the veins and everything. How much force does that take? What is the situation with reference to that [344] feature? I think the doctor said it was his whole theory of this thing, that it was based upon the idea that there was a force of 120 pounds falling from a height of 12 feet, hitting the man directly. I want to find out why the doctor thinks the history of the previous automobile accident has no bearing on the case in making or forming his opinion of the thing. It seems to me there are an awful lot of things you had better clear up

(Testimony of C. H. Horst.)

for my benefit on one side or the other, or both sides. It is almost noon now. Court will stand in recess until two o'clock.

(Noon recess.)

Mr. Angland: To bring out the matters your Honor suggested, do you want the defense to continue cross-examination, or do you want the plaintiff——

The Court: Whatever your pleasure is, I don't care. I just thought it should be called to the attention of both parties. It is something, it seems to me, we should know something about.

Mr. Doepker: May we have the right to reopen plaintiff's case with this witness?

The Court: Very well.

Q. (By Mr. Doepker): Let me ask you this brief question in connection with the history in this case of Mr. Hennessey's long confinement in St. James Hospital for this pneumonia that complicated into nephritis, and further considering that as late, I believe it was in the year 1941, September, 1941, I [345] believe, as late as that time, in the examinations which he had taken with Dr. Childs in Seattle for the entrance into the Naval Service, and also with the examination in connection with his being drafted. I want to know if there is anything in that record there that we are referring to, the fact that even as late as 1942 there may have been some residuals of nephritis, do you

(Testimony of C. H. Horst.)

consider that as a material thing in this case at all?

A. No, I don't. I consider it. It was a case of chronic nephritis, and it was a severe one, and my examination of the urine was negative, and it had no relationship whatever to this accident, so I discarded it.

Q. Did you observe that during the time he had this nephritis, that is, looking at the chart of the St. James Hospital, was there some marked thing in there that you mentioned to me the other day? I am talking now about the St. James Hospital chart, Doctor.

A. Yes, sir.

Q. Was there some marked thing in there that caused you to comment upon that hospitalization?

A. There was, I examined the urine examinations, and most of the urine examinations, in spite of the fact he was in the height of his attack of chronic nephritis, the specific gravity was always 1.024 or 1.026, and once or twice it got down to 111, and it showed that when the gravity mounts, it means that the kidneys are, after all, having a good ability to discharge [346] and function, and I examined this man, and I didn't find any albumin at all in his urine, and I see in this report here that the Army didn't find it either, but Dr. Shanley says there was a trace of albumin present, and at that time in 1941, his kidneys were found that he had recovered, but because of the serious condition that he was in with this edema in his abdomen, they were afraid to accept him. The physical examination

(Testimony of C. H. Horst.)

was not completed because of the very definite history of nephritis and hospitalization for nine months for this condition. The urine, however, was examined, which showed albumin. This, together with the history above, and the physical evidence of past distension of the abdomen due to edema was considered disqualifying. That was what anybody would have done in the Army because this man certainly had a severe case of nephritis, but I didn't think it had any relationship to this trouble.

Q. Is nephritis considered by the medical profession as an infectious disease?

A. No, I don't think so. It is considered an inflamed condition of the kidneys; they don't discrete the urine properly; they are clouded.

Q. May it be said in your study of this case you don't consider this nephritis as material so far as this case or Mr. Hennessey is concerned that we are considering here today?

A. No, it would be discarded in any fair consideration of the case. [347]

Q. Now, there is another matter; there is no charts here. I think I asked you about it in a part of our examination. That is the automobile accident that occurred between Toston, Montana, and Three Forks, Montana, in the year 1947. Mr. Hennessey's car rolled over, and in that accident he sustained an injury to the right shoulder which, so far as the injury to the right shoulder is concerned, is very similar to the injury he sustained when the man fell

(Testimony of C. H. Horst.)

on him. I know in your history you have mentioned that, and that you have stated he was recuperating from that shoulder injury in 1947 for a period of about six months. Now, then do you have any opinion, or do you consider that there is any similarity between that accident and the one that you have attributed this cause to?

A. No, the injury that happened in the automobile was—the automobile turned over, and the man was rotated over if he went with the car. This accident was a pressure accident; this is where a man of 120 pounds fell on this man's shoulder and on his back, and it pressed the blood and all the organs in the body down toward the feet. It was a compression of the vascular organs that was especially detrimental in his case because they were all full of blood at the time the accident occurred. When additional pressure came down on them, then they were distended and the phenomenon I described time and time again this morning occurred.

Q. All right. Now, Doctor, in regard to this compression, [348] can you give the Court as illustrations of what occurs in these compression injuries at times what different things have you observed in compressions of that nature, or more severe, which resulted in even a crushing of one of the bones of the spine, or two or more of the bones of the spine?

Mr. Angland: Just a minute; I will object to that. There is no crushing of bones of the spine in this case, your Honor.

(Testimony of C. H. Horst.)

Mr. Doepker: I want to illustrate. The Court is trying to compare this force.

The Court: I don't think we are concerned with some other different kind of case in which bones are crushed; I know there are forces which will crush bones, but you have gone into the fact, and the doctor has testified to the point that the blow having come on the shoulder, it created a rush of blood, it distended the vessels and so forth. Now, go into that line of thing. What kind of blow is necessary, and how much pressure, and how you gauge that.

Q. Doctor, the testimony in this case is, in the depositions and in the case, that this ceiling in this men's wash room was 12 feet high. The lavatory that Mr. Hennessey was washing his hands at, I believe the evidence shows was 30 inches from the floor; he is six feet and a quarter in height, but he was bent over, I believe the record is he estimated, about 30 degrees. There is no evidence in the case that he was expecting any blow that he was set for or braced for, but this came. The only [349] definite evidence that we have is that Mr. Livingston himself weighed between 115 and 130 pounds during a period of time in about this time, so we could estimate about 120 pounds, I believe would be a fair estimate. Now, he came through—it must have been a compo-board or some like substance, and also some insulation, because there was some insulation fell on Mr. Hennessey. When Mr. Livingston came down, Mr. Livingston testified he went to the floor, and that the only injury he sustained was a bruised

(Testimony of C. H. Horst.)

knee, a slightly bruised knee, that is what he said, in that fall when he came to the floor, all that he got out of it was a slightly bruised knee. Now, then, I want you to assume that situation that has been described to you there. Would that lead you to feel that was a sufficient force or not to distend those blood vessels by the falling of this human being upon Mr. Hennessey, whether it was a direct, or whether it was a glancing, blow?

Mr. Angland: I think counsel stated that the only evidence is that he fell—I think counsel should modify that by the fact that the witness Livingston doesn't know whether he struck Mr. Hennessey when he came down, or whether he didn't. It further was not shown by the deposition that the knee injury was received when he struck the floor.

Mr. Doepker: Well, we asked him that, your Honor, he hasn't—

The Court: I haven't read the deposition, but in any event, it [350] doesn't make any difference so far as this witness' testimony is concerned. I don't see that your objection amounts to anything, counsel, except that all of the evidence so far, so far as I can recall it, is that this was a glancing blow. That is the way it was described by Mr. Hennessey and everybody else who has mentioned it.

Mr. Angland: Mr. Livingston in the deposition states he doesn't know whether he struck him or didn't.

The Court: Of course, you would have to assume he struck him. In any event, assuming he was

(Testimony of C. H. Horst.)

struck, it was a glancing blow. Now, based upon that theory, you can inquire.

Q. (By Mr. Doepker): You heard that. If it hit him on the shoulder and back——

A. Yes, I considered that in my history, and my answer to that is this: that the blow that he received was mostly absorbed by himself. I base that on the fact that the man who fell upon him had minor injuries, but the blow caused by the fall from the ceiling was the principal cause of this man's later disturbance, and it was a pressure blow on his shoulder that brought this about. Had this man fallen and missed him, the fellow who fell, I don't know what would have happened to him, but I'll tell you this, it would have been more than a skinned knee. You can't fall 12 feet with more than 120 pounds and not cause some disturbance. You must remember this: the injured man was not knocked down; he did hurt his [351] shoulder, and the shoulder had been injured before. He was concerned about the shoulder mostly, it didn't come into his consciousness, rather, of any other injury, but it was this blow that subsequently is the cause of this thrombus.

Q. Now, passing from that, Doctor, passing——

The Court: I'll tell you, before we pass from that, I would like to get it clear. The doctor keeps saying it was a direct blow; the evidence says it was not a direct blow. The whole testimony of this doctor is just out of the case if he is going to insist

(Testimony of C. H. Horst.)

this was a direct blow he is talking about, that that is what it took was a direct blow. If that is what the doctor says it is, fine with me. I don't want to finish his testimony, but I am telling you his testimony is worth nothing, because the evidence in the case is that this was not a direct blow, it was just a glancing blow.

Mr. Doepker: Your Honor, the man didn't stay there; the man testified he was hit on the right shoulder.

The Court: If you are satisfied, Mr. Doepker, go ahead. It is not up to me. I am telling you the problem we are faced with.

A. It is my fault. I will say a glancing blow, then. It fell right down.

The Court: What is the difference between a glancing blow and a direct blow?

A. It fell down and hit this man. If it fell on top of him [352] and crushed him down, it would be a direct blow, and if it hit on his shoulder and glanced off, it would be a glancing blow. The main issue is did it cause this injury. Whether he had a direct blow or a glancing blow, it still would have caused this injury.

The Court: Would it make any difference what part of the body hit him?

A. No, the evidence shows he was hit on the right shoulder. If it was a direct blow, you would say it should have hit him in the middle of the back. It hit him on the right shoulder and caused a rein-

(Testimony of C. H. Horst.)

flammation of that shoulder previously injured, but that wasn't the main thing in this man. The main thing was 120 pounds falling on his shoulder. It was a compression blow, which is the essential thing here. It was the effect of this 120 pounds falling directly on this man's shoulder and sending impulses throughout his body, which centered on the venous vessels and caused that thrombus.

The Court: What was the weight of 120 pounds falling the six or seven feet when it struck Mr. Hennessey, what was that pressure?

A. I couldn't calculate it. If it was put up to mathematics, I think I would have to have an engineer figure it out. I know 120 pounds falling down increases in weight.

The Court: Well, what effect would the position that Mr. Hennessey was in have to do with what the result would be? [353]

A. It would have a lot of effect because it would give a greater surface for the 120 pounds to light on if he was bent over as he was supposed to be, over 30 degrees. Therefore, the weight of 120 pounds coming down on the right shoulder and glancing like that would be of greater force than one that would glance off his shoulder coming down on the right shoulder and glancing like that would be of greater force than one that would glance off his shoulder coming down if he was standing erect.

The Court: And considering the pressure that is necessary to create the distension of the vessels

(Testimony of C. H. Horst.)

that you have described, what would that have to do with reference to the balance of the person who was hit; what effect on the balance would a weight of that kind have hitting a person not expecting it?

A. Well, in this particular case, it didn't throw him to the ground, nor did he fall, so it didn't have any effect on his balance. He stood the whole thing.

The Court: Does that mean anything to you with reference to what the pressure was?

A. Yes, it means it was a glancing blow and the man was bent over, and he received the impulse, 120 pounds of his body, and the result was that it distended these vessels. That is what it means to me. It means more than if a feather fell on him. A feather wouldn't hurt him at all, but if he has 120 pounds fall on him, that would be reflected in the disabilities that have developed in this case.

The Court: And whether or not it was a direct or glancing [354] blow, could that be determined from the fact that he didn't lose his balance?

A. No, I don't think it could. You have to take the history of the case as it was given; you have to take into consideration only what was given. A man fell down on him weighing 120 pounds while he was bent at an angle of 30 degrees. That fell on him, and that was the pressure that was transmitted through his body, and it, in this case, involved the large arterial trunks that were brought up in this trial.

The Court: Do you have any idea how much

(Testimony of C. H. Horst.)

pressure it does take for a blow on the body to distend the vessels?

A. No, I don't think I have ever read it.

The Court: Would a weight of 50 pounds falling six or seven feet do that?

A. It might, yes, sir. I think a heavier weight might do it; a heavier weight might crush this man to his knees, it might do that. This I do know——

The Court: Have you had any experience that would indicate to you that 120 pounds falling that distance would distend the vessels? A. No.

The Court: Then what do you base——

A. I base it upon the history and findings.

The Court: You base it upon the conclusion of what happened thereafter? [355]

A. Yes, sir.

The Court: Is that the only thing you base that on, Doctor?

A. I base it on that and on the subsequent history and the development that occurred in his body. There are all kinds of injuries. I have never had occasion to examine any person that had a man fall through a ceiling on him. I think that is a rare injury.

The Court: Have you had occasion to examine anyone who had an object fall on him, not a man?

A. Yes, I have seen people who fell down in places and people who have been in caves in the mines when there has been a slide of ore. I have considered those kind of cases, and, of course, when a man gets buried in the ore, those are similar cases.

(Testimony of C. H. Horst.)

Sometimes people escape without any serious injury, and other times they have all kinds of injuries. I don't see—this is a selective case, this is where an arterial system filled with blood has been suddenly pressed upon by 120 pounds pressure, or probably more, and it has caused these disabilities we have discussed in the last few days.

The Court: Have you had any experience, or do you know what the comparative pressures were, assuming that a person fell the six or seven feet from the ceiling down to the height of Mr. Hennessey's shoulder, what the comparative pressure between that would be, and the case you referred to in the book where the runner held his breath and ran for 120 yards in the hurdle [356] race; what would be the difference between the pressures in those cases? Is there any experience upon which you can tell us?

A. I have never studied it from the standpoint of how many pounds pressure there was.

The Court: Is there some relation between it?

A. I think there is. Certainly, if you hold your breath and your heart beats, the pressure will increase in those vessels, because the heart keeps pumping all the time. The man holds his breath and pressure will come on those veins and arteries.

The Court: Is there anyway you can compare that pressure with the pressure that results from a glancing blow or a direct blow, or any other kind of a blow; is there any way you can judge it?

A. You could only judge it by comparison, what

(Testimony of C. H. Horst.)

you would think. I don't know how it was done experimentally. I don't know whether anybody has ever tried experiments to determine the difference in pressures. All people run——

The Court: Well, would you say that the pressure that resulted from the man dropping in this case as heretofore described to you upon Mr. Hennessey's shoulder was as great as the pressure built up in the book?

A. I think this was more.

The Court: You think the pressure in this instance would be more?

A. Yes, sir. [357]

The Court: Why?

A. Because I don't think that holding the breath in the lungs and the heart pumping the blood through the veins could be comparable in strength with a man falling 120 feet. I think a man falling——

The Court: You don't mean 120 feet, you mean to say five or six or seven feet.

A. Yes. I think that man would cause a greater pressure on those vessels than a man running 100 yards and holding his breath; yet that history shows that man had a thrombus the entire length of the venous vein. All men don't have the same material. Some men have stronger materials than others. That would have to be taken into consideration, and the age of the person; and I have never considered the effect of the weight of a man falling on a man's

(Testimony of C. H. Horst.)

back. The only thing I have considered, your Honor, is the effect it had on his body. Some people would have their legs broken, that would have been sufficient; some people could have developed hemorrhage in their abdomen and have no trouble with veins at all. This man's trouble centers in the veins.

The Court: Of course, if a man falls on you and breaks your leg, it is obvious it just took that much weight to break your leg.

A. That's right.

The Court: In this case we are dealing with a different matter; [358] we are dealing with a matter in which we have to make deductions. It is not that evident.

A. No.

The Court: It is not patent, so we have to deal with scientific knowledge and deductions resulting from your experiences.

A. You have to deal with what the accident caused, too, when that came down. That went through his veins. It could have caused an excessive hemorrhage in his abdomen; it could have broke some blood vessels, and there would have been a big blood clot in there if it broke a big blood vessel. What happened here? He injured the vena cava, and it developed a thrombus. If the weight fell down and broke his ribs, then that would be the cause of it. There is multiple injuries could occur from a weight falling any distance and hitting a man on the shoulder or back. It could have

(Testimony of C. H. Horst.)

paralyzed him; it could have caused him a myelitis in his spine, but we have to deal with the conditions that the injury caused. That is what I think this caused here, I think the veins have become over-distended by reason of the crushing force from this man falling on him; I think the force was broken to a large extent for the other man who glanced off of him because he had little or no injury, so this man received the maximum force.

The Court: In your opinion, the force created in this instance was greater than the built up pressure in the case you [359] cited from the book you have read?

A. I think it would be, because I think the falling of 120 pounds would be greater than the pressure that could be exerted by a man holding his breath and the heart beating against it.

The Court: A heart beating in what condition?

A. He was holding his breath and the heart beat just the same. The heart was sending the blood through the arterial tree and it was being forced up in the venous system. The man held his breath, and it was caught in between those two pressures.

The Court: It was a heart beating in the course of a 120 yard hurdle race. Wouldn't that change the pressure?

A. That was what caused the pressure, that race. It was what caused it. When he was at ease, it was the normal pressure you do have. It is a normal condition. He made an unusual condition of it.

(Testimony of C. H. Horst.)

The Court: Do you know how much pressure ordinarily the heart raises when it beats?

A. We measure it with the blood pressure machine, and it is 120 mm. of mercury high of pressure, and 80 of low pressure, and that is determined by the sounds of the heart through the vessels.

The Court: That goes up as the heart activates?

A. Yes, sir. Why, we take and put a band around the arm, and after the arteries compress against the bone, and we listen [360] and there are no sounds that come through the stethoscope—that is applied to the vessels on the arm, then we let it up. First, we hear the heart beat. That is systolic pressure; then when the heart sounds disappear, that is diastolic pressure, and the pulse pressure is the difference between the high pressure and the low pressure, which is usually 50. We call it pulse pressure.

The Court: How high does that build up under exertion?

A. On systolic pressure, it might build up to 180, and low pressure would go up to 100 or 110. As soon as the patient stops running it reverts to normal. If a man had blood pressure of 180 and he exerted himself that way, it might go up to 220. If he had bad vessels, it would be bad for him, but I have never seen anybody who had a stroke——

The Court: In the case you referred to, it appears that the pressure that was exerted in that case

(Testimony of C. H. Horst.)

was a continuing pressure for a period of some 16 seconds.

A. That's right.

The Court: In this case, I suppose the pressure was just momentary, or was it?

A. While he was running, of course, it was. When he stopped, he started breathing again, and the reason that case was brought by me in evidence was that I couldn't find any place where there was a thrombus of that vein by reason of any embolus that arose in the body. The emboli that were always considered in the [361] cases were those that arose——

The Court: From the arterial side?

A. Yes, that's right.

The Court: Here is what I am faced with, Doctor, of trying to find out: We don't have any history of the thrombus or emboli arising on the arterial side and working as you say it did in this case, except as we refer to this instance. Now, we have got to then have a case that is similar to that instance, don't we, in order to correlate the two?

A. That is what we have here. I didn't find any other, your Honor.

The Court: What is the difference between a pressure built up and maintained for 16 seconds, and a momentary pressure?

A. The only difference is the sustained 15 minutes more.

The Court: 15 seconds.

(Testimony of C. H. Horst.)

A. 15 seconds more.

The Court: The fact that it extended for that length of time, would that tend to weaken the walls of the vessel any, rather than just a momentary expansion?

A. No, it wouldn't, it would be just the same, because both cases have the same condition develop after them. The man that was running 16 seconds, he developed a thrombus of his vena cava, and the man who had the falling from the ceiling, he had a thrombus.

The Court: You always assume, of course, that this is just [362] exactly what happened. We have to proceed a little back of that, and you have to tell me is there any difference?

A. Between 16—

The Court: Between 16 seconds' pressure and one second?

A. Just 15 seconds difference, that is all.

The Court: Does that make any difference in the effect it would have upon the wall of the vessel?

A. It has to be the same kind of a vessel. It can't be Doecker's vessels and my vessels, they are not exactly the same. Then, you have to tell me what kind of vessel he has got, to answer the question.

The Court: Well, you tell me then, I can't tell you. Were the vessels in this case, the case you have referred to, the same as the vessels in Hennessey's case?

(Testimony of C. H. Horst.)

A. Well, the man that ran here was about 21 years of age, and Hennessey is 36 years of age, so Hennessey's arteries are a little bit older than his, and probably they would be a little more responsive to the pressure than the younger man's, but the younger man had the worse condition that developed, because it said that most of his vena cava was involved in this thrombus. So, how can one do that? The way the medical people do it is to try connecting up what kind of history; if he had three or four accidents that this man had, what kind of one, what would be blamed for this thrombus developing; and it certainly wouldn't have been a shoulder injury; it wouldn't have [363] been—a man in a car rolls over and over, that pressure wouldn't come that way, those were on the side, and this fall with this man—so that it is perfectly reasonable to suppose that that injury that has developed there is the cause of his thrombus, and all other considerations in this case are all thrown out. They don't hold water.

The Court: Don't misunderstand me, I am not arguing with you, I am not concerned with it at all. These things don't make sense to me unless you can correlate them. When, in all the history of medicine, you have to go back some 90 years, or whatever length of time that is, to find another case where there was a thrombus of the vena cava, and then say, because that happened at one time in 1880—whenever this case occurred that you have

(Testimony of C. H. Horst.)

referred to—I now think that is what happened in this case, then in order to justify that kind of a conclusion, you are going to have to, it seems to me, point out the real similarities between what happened in that case and what happened in this case; and why hasn't there been some history in the meantime of that very same thing happening in medical history?

A. The only reason is I didn't have access to a very extensive library to find that out, but the reason I brought this case in is to show a thrombus could occur in the vena cava without being transferred from some other source in the body, that it developed in that vena cava itself. [364]

The Court: But that is the only case in medical history.

A. Judge, that isn't fair to say that.

The Court: That is all you have told me about; that is what I am stuck with. Tell me about other cases.

A. I haven't got other cases. The reason I brought that is to show it could form in the vena cava.

The Court: Yes.

A. And further that the reason it stuck there is because of the injury to the wall of the vena cava, and then the development of the clot was shown to you for the reason it showed how blood forms a clot.

The Court: Doctor, do you understand that so far as this Court is advised, this is the second case

(Testimony of C. H. Horst.)

in history in which a thrombus of the vena cava has occurred, so far as you have told me, and I don't know anything else about medicine, except what you are telling me, so far, this is the second case in medical history.

Mr. Angland: I might add something further for the Court there, there is certainly a difference in the factual situation.

The Court: That is what I am getting at. If this is the second case of it, and the only experience you have is this prior history you have referred to in the book in order to substantiate your judgment that this phenomenon has now again occurred, it would seem to me you would have to correlate this condition to conditions that existed then. [365]

Mr. Doepker: May I say, your Honor, he has done that. Distension of blood vessels——

The Court: Very well, pass on to something else. You can argue it later.

Mr. Doepker: Your Honor, I think if the man had access to a history of all kinds of emboli, he might find some others. The question for your Honor to decide is: Is this reasonable or unreasonable.

The Court: Yes, but what I am up against is that this is the second time in the history of medicine that it occurred.

Mr. Angland: As I view the evidence as to this, he says it is possible it could have happened.

The Court: Let's not go any further. Mr. Doep-

(Testimony of C. H. Horst.)

ker is satisfied and you can argue the matter.

Mr. Doepker: Very well. That is all.

Recross-Examination

By Mr. Angland:

Q. What is an alkalosis?

A. I know nothing about alkalosis.

Q. Alkalosis?

A. Yes. I know very little about it. It is an alkaline condition in the blood.

Q. It develops in the blood?

A. Yes. [366]

Q. Can it develop by reason of a person not breathing?

A. Yes, that would be carbon monoxide.

Q. It is possible, isn't it? A. Yes.

Q. It is possible, Doctor, to have a man hold his breath and give him a quick pull, if you know what I mean, just have him hold his breath and give him one of these hugs, it is possible for him to get an alkalosis then, isn't it?

A. If he would hold his breath and he would absorb carbon dioxide, he would have alkalosis, yes.

Q. That's right.

A. It is only a temporary thing. It is an interference with respiration and passes off as soon as he takes a breath.

Q. It can build up, Doctor, to a point where it kills a man instantly, can't it?

(Testimony of C. H. Horst.)

A. Yes, you mean have a rope around his neck and hang him.

Q. Let's not go to a rope around his neck. Holding the breath and a hug of the chest, is that possible that could kill him, lack of oxygen?

A. The normal man?

Q. Yes.

A. I have never heard of it, and I have never heard of such experiments being tried. I don't think you could kill a man that way.

Q. Do you think the case you told about of the runner might [367] have been an alkalosis building up that later developed into the condition described in the book? A. It was more. This case——

The Court: Let's not go into it again, just answer his question.

A. No, I don't think so; I don't think alkalosis caused any thrombus of the inferior vena cava.

Q. Notwithstanding the fact the runner dropped over immediately when he hit the tape?

A. I didn't say that.

Q. That is what the story said. The fact he dropped over immediately and Mr. Hennessey has an embolus seven months later, that fact makes no difference whatever to you as to the similarity of those two cases?

A. I didn't study that case with the idea it would be brought in for comparison, except for one thing, to show that an injury to the wall of the inferior vena cava could cause a vascular clot to

(Testimony of C. H. Horst.)

form. I explained why that was done and tried to bring this in and tried to correlate with this other. I never gave it the slightest bit of consideration. I brought it in simply to show that a clot could form in the vena cava. I don't want to say that was the only clot in the world that ever appeared in that form. I merely stated it to you to show that a clot could form and did form in that vessel.

Q. Your purpose was to demonstrate that it is within the [368] realm of possibility that that is what happened to Mr. Hennessey, that it is within the realm of possibility, is that right?

A. That's right.

Q. Your reason for so testifying and referring to that story is to show it is within the realm of possibility?

A. Yes, sir.

Q. That a thrombus could have developed in Mr. Hennessey's case?

A. That's right.

Q. The purpose is to show us that this could happen, it is within the realm of possibility?

A. Yes.

Q. It isn't a normal thing, it isn't the usual thing?

A. That's right.

Q. Doctor, did you consider in your diagnosis and your analysis of this case the fact that Dr. Soltero treated Mr. Hennessey for a right shoulder condition arising out of the automobile accident?

A. Yes, sir.

Q. He gave him diathermy, I believe, wasn't it; deep therapy is the same thing, isn't it?

A. He treated him with diathermy, and perhaps

(Testimony of C. H. Horst.)

some deep therapy. He advised him to go to an osteopath, stating that was the reason a medical man couldn't treat it with much satisfaction. [369]

Q. Did he advise him to go to an osteopath after the automobile accident or after the accident down at Pocatello? I don't believe it is necessary to go into your notes.

A. I would say it was after Three Forks. I have it here, I would rather wait and see.

Q. Your best memory is that it was after Three Forks?

A. Here it is. It was June 2nd, it was after, the next day, it was right after the accident on June 2nd, 1949. "I went home," then he said, "The next day then I went home to Billings. My right shoulder was stiff and sore. I consulted Dr. Soltero, M.D. He gave me three diathermy treatments for my shoulder. He told me it was a type of injury that a medical doctor could not do much with and that whenever it bothered me again, to go to a good osteopath and have it rubbed out. After that, I had a nurse rub it out when necessary. I did not need my shoulder in my work, so I just let it go."

Q. Doctor, did you consider the fact that Dr. Soltero gave Mr. Hennessey diathermy treatments after the automobile accident, that so far as the right shoulder was again concerned, he again gave him diathermy treatments, substantially the same treatment following the accident at Pocatello, Idaho, have you considered that?

(Testimony of C. H. Horst.)

A. I didn't know Dr. Soltero gave him treatments after the automobile accident.

Q. He treated him on both occasions and the injury was [370] substantially the same.

A. It wouldn't make any difference to me, and Mr. Hennessey didn't have anything else bothering him. It was just his shoulder. He never knew he had anything wrong with his abdomen. It was only when he got up after he had been in the hospital four days when he was told he had recovered from pneumonia. He got up on his feet, and the thing came down in his left groin. He didn't have the slightest idea of that, and it has been brought out time and time again that the man did not know the thrombus was there, and my idea was to find out the reason for the formation of the thrombus and if the thrombus could form within the vena cava.

Q. Doctor, is it within the realm of possibility—I think you said that might take two years or more to develop—is it within the realm of possibility that the thrombus began to develop there at that time from the rolling over of the automobile and hitting the steering wheel?

A. Well, I didn't think so; I don't think it was injury enough, but it is within the realm of possibility that he could have developed it after that, and it is within the realm of possibility that he didn't have anything wrong with him after that.

Q. As to what happened on January 7th, Doctor,

(Testimony of C. H. Horst.)

there are many things within the realm of possibility, aren't there?

A. If you go into the realm of possibility, there are, but, [371] you see, after the thing develops, you don't have to wander into the realm of possibility because the condition is there. If it was in parts of his heart or kidneys, it would be within the realm of possibility, it would be within the realm of possibility that any kind of condition could have occurred, but it is not within the realm of possibility that there wouldn't be any symptoms of it.

Q. Doctor, it is possible, it is as possible as your theory, I mean, that arising out of the automobile accident there was an internal injury and that created a thrombus that finally came loose on January 7th, 1950?

A. Yes, that is within the realm of possibility. The only difference would be the character of the injury. In the case of the fall by the man, that was an entirely different force that struck him than the automobile.

Q. Doctor, you have had many occasions to treat people following automobile accidents?

A. Yes.

Q. Have you ever found them crack their knees?

A. Yes, and crack their chest.

Q. The steering wheel gets them across the chest or abdomen, doesn't it, isn't that the usual type of injury?

A. That is a common type.

(Testimony of C. H. Horst.)

Q. And that is a common source of thrombus?

A. I never saw a thrombus associated with it, no. This is [372] what they do, those steering wheel accidents: They last for an unusual time, eight or nine months they suffer from that. I have never seen a thrombus develop from it, but if one did develop from it and he got pain in his legs and it went up in his lungs, if it went in the vein, then he would have a pulmonary thrombus, and then I would know it, but he never had any of those things happen.

Q. Doctor, pressure across the abdomen if you get one of those automobile accidents is very great, isn't it?

A. It is, it is very painful and it lasts a long time, and it is within the realm of possibility that he could get a thrombus from that if he injured the wall.

Q. It is within the realm of possibility that Mr. Hennessey developed a thrombus in the automobile accident, and that is what came loose on January 7th, 1950?

A. It wasn't the same kind of accident. The man falling was a very much more severe affair than the accident in the automobile that fell over on the side of the road.

Q. Was Mr. Hennessey driving the car or was he a passenger?

A. I thought Mr. Hennessey was driving the car himself.

(Testimony of C. H. Horst.)

Q. You don't know?

A. That was my impression. He says when he was driving his car—let's see what he says: "Accident, 1947, going to Three Forks, I rolled my car over between Toston and Three Forks. Injured right shoulder, couldn't lift my right arm, [373] absent from office four days; suffered from it six months." That is my notes, and because of that I don't consider it of enough importance to relate it to this accident.

Q. Of course, you know nothing about how he was thrown around in the car when he rolled over?

A. I assume he was sitting in the car when it rolled over and he must have been thrown over on his side. I don't think he got any injuries in his **abdomen**.

Q. So far as the doctor who treated him in the automobile accident, who is the same doctor who treated him after the accident at Pocatello, the treatment was exactly the same?

A. I think it would be because the injury was the same, the injury to the right shoulder, and he didn't complain of anything else.

Q. That's right, because if the embolus started from that, it didn't hurt him any immediately, did it?

A. That's right, that is the whole condition of this case. What I am trying to find out is what caused the embolus, and I got this history, and I showed to you the possibility that it had occurred

(Testimony of C. H. Horst.)

before, that it was the first concrete example of a history I had seen; then, we usually study a case, we don't take one case that is a thousand years old. My book happened to show that and it was very apropos, and I went further than that, I showed how thrombi formed in the blood. That is what they didn't know then. [374]

Q. Doctor, the thrombus that developed in this case, it is within the realm of possibility that it came from the vena cava, as you have testified, isn't it? A. Yes.

Q. And it is within the realm of possibility that it came from the aorta? A. No.

Q. It is not possible?

A. No, I don't think it would be because, I'll tell you why, because the blood streams through the arterial vessels pretty much faster, and if it were formed in the aorta, it wouldn't get around to the venous side at all, because it would have to go to the periphery and would have to go through those capillary vessels to get to the venous side, and it couldn't get through. It would depend on where that thrombus came from. If it was above—an arterial thrombus could go into the kidney, it could go into the guts.

Q. Doctor, you have talked about automobile accidents and pressure. Do you get the type of thrombus you are talking about where a fellow is rolled over and pinned under an automobile?

A. Yes, sir.

(Testimony of C. H. Horst.)

Q. It is possible to get this thing you are talking about?

A. Yes, sir, you could get pressure like I described.

Q. It is possible to hit the abdomen and get the condition you are talking about? [375]

A. It is possible, not probable.

Q. You could hit your knee pretty hard and you might develop the condition you are talking about?

A. You might develop a thrombus, it is possible, yes, and probable.

Q. So, there are many possibilities, many possible sources of the emboli in this case, aren't there?

A. Yes, they have to come from some injury to the intima of the vessels before a thrombus can form. It makes no difference whether it is arteries or veins. If the injury is severe enough to injure the wall of the vessel, a thrombus will form.

Q. Your condition, as you have described it with your emboli going down into the left leg, could be the same whether it was in the artery or vein?

A. Yes, but the artery goes down and the vein comes up, and that is where the difference is in this case. I am claiming that the thrombus was a big thrombus and involved the left iliac vein and the right iliac vein as well as the lower portion of the vena cava, and it was a big heavy thrombus, and it settled rather than went up, and it couldn't go so very far because the vessels get smaller as they go down.

(Testimony of C. H. Horst.)

The Court: We have covered all that before. Let's get on to something else. [376]

The Witness: Yes, I'll say so, too.

Mr. Angland: That is all. [377]

C. H. HORST

recalled as a witness on behalf of the plaintiff, having previously been sworn, testified as follows:

Direct Examination

By Mr. Doepker:

Q. In regard to testimony of one of the Government witnesses to the effect that certain symptoms indicated an embolus on the arterial side, you were in the courtroom, I believe, when that testimony was given about the stopping of the pulsation in the artery, and the whiteness of the legs immediately, and so on? A. Yes, sir.

Q. Doctor, from your study of symptoms in a case of this kind, as between the question of whether it is in the artery or in the vein, I will ask you to state whether or not the symptoms [432] would be relatively the same if there was a blood clot, we will say, in the bifurcation of the vena cava, or a blood clot in the bifurcation, or saddle, of the aorta?

A. Yes, the symptoms would be the same at first.

Mr. Angland: What did you say, the symptoms would be the same at first?

A. Yes.

(Testimony of C. H. Horst.)

Q. In connection with that examination, also a statement was made that a blood clot would form and occlude a blood vessel in a period of 15 days. Has your study of this as a physician indicated to you that that does not apply, does or does not apply, to the type of embolus we are considering in this case? A. It does not apply.

Q. Do you have as a simple illustration a record which is recognized by the medical profession, that is used by the medical profession in their study of medicine, and in their study of case histories, do you have an illustrative case from the standpoint of symptoms and development of clots that would support your testimony? A. Yes, sir.

Q. I call your attention to a December, 1940, issue of "Surgery, Gynecology, and Obstetrics With International Abstracts of Surgery." Are you familiar with this work, Doctor? A. Yes, sir.

Q. Is that one of the works the medical profession use to keep [433] up to date on matters of their profession?

A. Yes, that is one of the best magazines that the profession has. It has original articles in the front part, and in the back part it has digests of all the international work that is published. These abstracts that are in the back are abstracted from original articles and signed by the surgeons who have digested them. One feature about those digests is that in digesting them, they don't carry forward the case histories; and it is a very valuable book

(Testimony of C. H. Horst.)

and the digests are really remarkable. I looked through them and I soon found out that they did not carry the case histories, and I would have to get the original, and some of them are digests from European magazines, medical and surgical magazines that are unobtainable by me, and there is a few that are published in the United States, in magazines published in the United States that were available. There is one, the New England Journal of Medicine, that I have. It summarizes and has collected from the world's literature 10 cases of involvement of the vena cava and the iliac veins, and these digests show the name of the author and the age of the patient and the nature of the accident, and the manner in which the accident took place, and the final diagnosis.

Q. Now, Doctor, with respect to this one question which we have presented to you, the question of the symptoms following an obstruction of the vena cava, or the symptoms following an obstruction of a high iliac vein, and the length of [434] time of formation of a clot, have you, in this volume of December, 1940, have you a history of such a case that shows those symptoms to be the same as those that were testified to by the United States' witness, with respect to pallor of the legs and stopping of the pulsations in the artery, and so on?

A. Yes, sir.

Q. I call your attention to this volume, and ask you if you will give the Court and counsel the benefit of that case?

(Testimony of C. H. Horst.)

A. This case was reported in an article written by John J. Dougherty, M.D., and John Homans, Boston, Massachusetts. The title of the article is "Venography, a Clinical Study." The history that Mr. Doecker referred to and that I found—I found this before I testified in this case—this is the history of a 17-year-old school boy: "He entered the hospital on April 5th, 1939, complaining chiefly of diarrhea, cramping abdominal pain and general weakness. He had been well and active until six weeks before admission, at which time he suffered a head cold. Shortly thereafter diarrhea began and rapidly increased to as many as 12 watery stools a day. After the first few days, these were blood streaked, and occasionally even bright red. There was no abdominal tenderness or vomiting. A diagnosis of mucous colitis was made. 87 days after admission, he experienced a sudden severe pain in his left groin, accompanied by tenderness, coldness, and pallor of the whole leg. Arterial pulsations were absent, even the upper femoral artery." [435]

Q. Doctor, right at that point, where is the upper femoral artery?

A. The upper femoral artery is at the junction of the inguinal ligament, and then begins the iliac vein. The iliac artery comes from the knee up to the inguinal ligament, and then the artery is called the external iliac artery, then when it comes to this artery, which is called the hypogastrica artery, then the vein continues as the common iliac artery, and

(Testimony of C. H. Horst.)

there are two common iliac arteries, the right one and the left one.

Q. You were reading where pulsations in the artery had ceased, even up in the upper part of the leg?

A. I spoke of artery. The veins are the same as the arteries, this is the right iliac artery, right iliac vein, left external iliac artery and hypogastrica artery (indicating), and the same is on both sides, and the artery that comes from the knee is the femoral artery. Now, then, "A surgical consultant, J. H. felt that there had developed a deep venous thrombosis and an associated arterial spasm. A paravertebral lumbar procaine block was made and about six hours later"—

Mr. Angland: What was made?

A. A paravertebral lumbar procaine block, the same as this patient. "A paravertebral lumbar procaine block was made and about six hours later, vigorous arterial pulsations returned. The very moderate edema of the entire leg, which now appeared, persisted for some 10 days and was thought to be consistent with [436] a diagnosis of femoroiliac thrombosis. Curiously enough, there was improvement in the signs and symptoms referable to the colitis. 36 days after the onset of arterial spasm, a venogram was made of the left leg, Fig. 2, by the technique described." It describes the technique of injecting a radio opaque fluid into the vein in order to visualize the vein with X-rays.

(Testimony of C. H. Horst.)

“36 days after the onset of arterial spasm, a venogram was made of the left leg by the technique described.” Venogram, it means that that is a picture of the vein by means of an X-ray. “A tortuous outline of the injected fluid was seen in the upper two-thirds of the femoral vein, together with an unusual collateral circulation. These appearances were taken as evidence that thrombosis had, indeed, occupied the femoral vein, as previously believed, and that in the course of a little over five weeks had become fully canalized”—that is, a hole went through the clot, allowing the passage of blood.

Mr. Angland: How many days afterwards did you say that developed? Was it five weeks?

A. Yes, sir.

Mr. Angland: Five weeks later you had a canalization?

A. Yes, sir. I'll read it again. Here it is: “The appearances of this venogram was taken as evidence that thrombosis had, indeed, occupied the femoral vein, as previously believed, and that in the course of a little over five weeks had become fully canalized.” Now, then, of course, the picture of Mr. Hennessey [437] was very similar, except that Mr. Hennessey, besides having the pallor in his leg, had terrific pain, and it showed that you could have a contraction of the peripheral vessels in the arteries as well as in the veins, and it showed that this was definitely a thrombus in the vein. Now,

(Testimony of C. H. Horst.)

in Mr. Hennessey's case, he had nothing on the arterial side to show a reason for a thrombus; he didn't have any heart trouble; he didn't have any disease of the vessels, but he had a thrombus, and it was apparently, looking at it from the viewpoint of the arterial side, in the bifurcation of the aorta, so it was called a saddle clot, because one part of the clot went on the right iliac artery, and one in the left iliac artery, and the history showed that that is where it must have occurred because the pain started first in the right side and then in the left side, and then this disability immediately appeared, and the man became semiconscious, and his right leg turned white just as this occurred in this case, and then when they began to shoot this procaine in there and intervenous injections of procaine and narcotics to relieve pain, the pallor in his left leg was described by the doctors who had him in charge as going from the lower portion of the leg gradually down to the foot, then entirely disappearing. It showed there was a relaxation of the contracted arteries and that circulation was re-established. If the clot was in the arterial side, the symptoms would have been similar, because it would be the same [438] duplication of vessels; the vessels are duplicated, there is one aorta and one vena cava, which are very similar, and then they both divide into right and left iliac veins and right and left iliac arteries, all the way down the leg practically. There are more veins, usually, than arteries. So then it comes about regarding the

(Testimony of C. H. Horst.)

length of time that it takes a clot to form, and this boy, after his diarrhea, it was 87 days before the clot developed, so in Mr. Hennessey's case it was seven months, but the clots, they form gradually when they form in veins or arteries because of rents or tears in either of those vessels; and I showed the vein was more likely to tear than the artery because of the anatomical structure of veins.

Q. Postoperative clots, do they develop in a period of 15 days?

A. Yes; operations, you have a clot anywhere from seven to 12 days, and the clot is a very extensive one. Those clots are formed in large veins of the pelvis, and they are very soft and very large, and, usually, if they are from the vein, they go up into the lung, then through the pulmonary artery and form a big clot in each lung, and that stops the vital center, the respiratory center, the patient dies. I have a picture—where is that picture? This is a picture of a fatal case (indicating). It shows the clot, sir. That is the lung (indicating), and the pulmonary artery is opened and the clot is that red part, and these are clots that appeared in the veins. You [439] see, when venous blood goes up into the lung, it is carried into the lung by the pulmonary artery. When blood comes back from the lungs aerated, it comes back in those pulmonary veins. There is changes in the lung from veins to arteries and arteries to veins. To discuss clots that form following operations, patients when operated on

(Testimony of C. H. Horst.)

have very little leeway to get out of bed. Now the idea is switched around to get them out as soon as possible so the blood lying in these dilated veins in the pelvis, if it doesn't move, has a tendency to form clots, because in the operation the veins are inadvertently damaged by handling or retractors being put in, and for that reason, some clots form, and those are the clots that form postoperatively; but in this case, it is a formation of a clot in a vein, and it is a slow building up of those cells that I spoke of, the white corpuscles and plasmacytes, that keep building up within the interior of the veins until they become quite extensive, and then they have slipped as they have in Mr. Hennessey's case. Neither Mr. Hennessey, nor this boy had any symptoms whatever from these clots that were in the vein until they slipped and caused the pain in the legs and the pallor of the skin, and what else?

Q. Stopping of the pulsation?

A. And then the responses to the different sedatives that were used.

Q. Doctor, in connection with the testimony of one of the [440] witnesses for the United States, there was reference made to your testimony in which you accounted for some spinal cord damage, and which the witness testified that if a thrombus in the vein would go into, or would get into one of the smaller veins, that, instead of going into the spinal cord, it would go into that portion of the lower part of the spine which is, in English, called

(Testimony of C. H. Horst.)

the horse's tail, or cauda equina. I would like to have you explain your diagnosis of that as regards the method in which the vein, or the spinal cord would be damaged by a small thrombus, because of the fact you have testified Mr. Hennessey has evidence of spinal cord damage by reason of a spastic or other condition in his leg that still maintains. Could you demonstrate to the Court the complexity of that venal circulation in the spine to show that the clot does not go directly into what is called the horse's tail?

A. Well, yes, sir. The spinal cord is within the spinal canal made by the vertebral column and the loop that is formed by the lamina and spinous process, so the cord goes right through the spinal canal, and the cord is surrounded by the plexus of nerves, such as we brought here (indicating) to describe them. From each vertebra there comes a little vein that carries the blood into the general venous circulation, so that, if a person had a thrombus, for instances—these veins (indicating), the way this picture is, some of the veins drain the interior of the spinal vertebra, and some come in [441] through the intervertebral disks through which nerves come out from the spine. Here are the nerves (indicating), and they are accompanied by arteries and veins. This plexus of veins that surrounds the spinal cord has very many outlets, as you see, so if this little vein would become occluded, the blood would go up and come out. You could have a whole

(Testimony of C. H. Horst.)

series of thrombosed veins coming out from the interior of the spinal canal and still circulation could be established, because of the complexity of the arrangement of those veins that surround that; so, you see, by taking one individual vessel and stating that it is over the third vertebra, below the location of the spinal cord, doesn't mean anything, because you could tie any number of those off and collateral circulation could be established, so that point doesn't mean anything. The point about this case as regards the nervous system is the terrific convulsions and spasms that this man had for days when he was in bed, which required an elaborate amount of sedatives to control, and that showed that the brain that controls the lower motor neurons, the tracts that go from the brain to control the lower motor neurons were not working, because those impulses that came from the feet and legs there went up into the spinal cord, were not inhibited, and were allowed to go at random, and the result was these spasms occurred. If they were controlled by the pyramidal tract, the spasms would not have occurred as they did, so, therefore, there is some obstruction in the spinal cord, and [442] the spinal cord is made up of gray and white matter, and in case——

Mr. Angland: Just a minute, your Honor. I think the doctor is drifting now. I am going to object to him going into what he is going in now, as drifting into a theory completely at variance

(Testimony of C. H. Horst.)

with the former testimony. He is talking about damage to the spinal cord not arising out of an embolus at all; he is drifting clear out of that, and, of course, the pleadings in this case restrict their proof on that, and, of course, their case in chief is based upon the pleadings and damage resulting from embolus.

The Court: Objection is overruled; proceed.

A. Now, the spinal cord is made up of gray matter and white matter, and in the gray matter are all these special cells that control the muscles and control the blood vessels, so, for instance, take infantile paralysis, there the cells in the anterior horn of the gray matter are destroyed, and the consequence is that the leg below withers and is not able to be used if there is a complete destruction of the connection of the nerves. If there is a partial connection, certain muscles have escaped by reason of their anterior horn cells not being destroyed, and certain muscles in that leg will be voluntarily moved. In other words, when there is an interruption of the lower motor neurons, paralysis occurs; if there is a disconnection between the upper motor neurons, there is a spasticity, [443] there is hyperactivity of all the muscles of the leg, and these sensory impulses that come up from the leg are uncontrolled, and, therefore, this condition that Mr. Hennessey suffered from develops. This circulation that I described as being around the spinal cord goes all up and down the spinal cord,

(Testimony of C. H. Horst.)

it comes from the cervical region, dorsal region, lumbar region, and sacro region, and goes entirely up and down the cord, because while the spinal cord stops at the lower border of the first lumbar vertebra, the membranes that cover the cord, the dura mater and arachnoid membranes and the pia membranes, all have to be supplied with blood, so that complex system of veins is from the beginning of the cervical cord down through coccyx, it is present all the way, so that allows a very liberal method of transferring blood from one place to the other, and if the veins that I described here as coming out from the vena cava were occluded by reason of a clot within it, if that lumbar vein was occluded and went down, it could start emboli of various sizes, small emboli and large ones, into the plexus around the spinal cord, and that could lead into the gray matter of the spinal cord and cause a disturbance of the tracts, the nerve tracts, that control the leg.

Mr. Doepker: At this time, your Honor, we desire to make an offer of proof in connection with deep venous thrombosis in the leg following effort or strain, and in response to your Honor's questions that were propounded to Dr. Horst at Billings [444] as to case histories besides the one that he had with him at that time, we offer his testimony in connection with a research that was made by Dr. Chilton Crane from the Department of Hygiene, Harvard University, and Department of

(Testimony of C. H. Horst.)

Surgery, Peter Bent Brigham Hospital, who is a clinical associate in surgery, Harvard Medical School, and associate in surgery at Peter Bent Brigham Hospital, in Boston, for the purpose of illustrating reported cases from a period starting in 1930, up to April of 1952.

The Court: And what is the purpose, to show that it is possible for the vena cava——

Mr. Doepker: No, your Honor, it is to show similar cases that have occurred besides the one that he testified to there of the athlete. He has ten.

The Court: Was your former opinion based upon a study of these cases?

The Witness: Those particular cases?

The Court: Yes.

The Witness: No, they weren't available; no, I didn't have them.

The Court: I don't understand the purpose.

Mr. Doepker: Your Honor, the purpose of this is to substantiate the diagnosis.

The Court: This is not rebuttal then?

Mr. Doepker: No, that is the reason we are making an [445] offer of proof at this time.

The Court: You want to ask leave to reopen to introduce this?

Mr. Doepker: That's right.

The Court: I'll tell you, I would like to have it in, except surely the Government is entitled to have these analyzed and another doctor, with maybe a different view, testify. Maybe there could be no other view, I don't know.

(Testimony of C. H. Horst.)

Mr. Doepker: The only thing these are, your Honor, are medical histories which we would put in the same category as authorities we would pick out of the Pacific Reporter.

The Court: Yes, but whatever it is, it comes at a point when you have closed your case in chief. As I say, the cases may be of interest and help actually, but, on the other hand, the Government is certainly entitled to have the cases analyzed and explained to the Court, and they are just not in a position to do that.

Mr. Doepker: We would be willing to stipulate if the Government wished to examine those and to submit surrebuttal on their case; they could furnish it in the form of a statement by their doctor, or any doctor they choose to see, if there is any difference between the two.

Mr. Angland: I am not in a position to make a momentary decision on that. I haven't had an opportunity to study that over or know what it is about.

The Court: You wouldn't know what it is about after you had [446] studied it.

Mr. Angland: No, I would have to sit down with a doctor to find out what it is about. I did that with respect to the example Dr. Horst based his opinion on, and our medical evidence was to the effect it wasn't a similar situation.

The Witness: Judge, may I show you the place?

The Court: Wait a minute. Well, of course,

(Testimony of C. H. Horst.)

this article deals with thrombosis in the leg.

Mr. Doepker: Yes, and the source is also shown in those tables as either the branches of the veins or the vena cava itself.

The Witness: Your Honor, it shows a collection there of cases very similar to Mr. Hennessey's. There are 10 of them there, did you see that?

The Court: Yes, it lists that.

The Witness: You see, after he had described thrombosis in the legs from minor injuries, then he goes in and studies the literature from 1930 to the present time for thrombi that appeared in deep veins.

The Court: I don't know. You see, the difficulty of this thing, without assistance of other doctors, I just see the statement like an exhibit, and the cited cause is usually from minor injuries or strain to the lower leg and foot. That is what he is talking about in those cases.

Mr. Doepker: That's right, that particular article deals [447] with the lower leg and foot, but the illustrations we are offering deal with thrombosis in higher arteries and veins that result in damage to the lower leg.

Mr. Angland: That is a very different case than Dr. Horst made in Billings in his testimony in chief. Thrombosis in the lower leg is a quite different case.

The Court: What is the real purpose of this now? It may be you are trying to prove something everybody will admit; I don't know.

(Testimony of C. H. Horst.)

Mr. Doepker: The purpose is to show case histories similar to the case we are considering here, where a thrombus did occur in the upper, in the higher deep veins, and there is two instances there where they attribute it to a thrombus in the vena cava in those examples, and the thrombus fell off and went down into the lower leg. The damage in the lower leg——

Mr. Angland: Dr. Horst's story is that it broke off and fell into the lower leg, down the vena cava. That is the theory in his testimony in chief. If he has a supporting case for that specific situation that he described——

The Court: Does this have anything to do with a case in which there is a thrombus in the vena cava and a dropping off of the emboli into the lower leg?

Mr. Doepker: I don't know whether they do or not. Have you made a study about that?

The Witness: No; it doesn't say anything about that. [448]

The Court: That is Dr. Horst's testimony in this case.

Mr. Doepker: That's right.

The Court: If those cases aren't of that nature, are they of any materiality? I'll tell you what I am going to do. I will overrule any objections you have and accept it into evidence, and I'll tell you, if the cases strike me, in the light of the whole evidence, of being of value, I'll call it to the Govern-

(Testimony of C. H. Horst.)

ment's attention and give the Government an opportunity to protect itself. I don't know what good any history is going to do except one that shows me that in line with the doctor's theory of the case, that there was a thrombus in the vena cava and an embolus broke broke off and sank to the leg. That would be the only history that I offhand think would be of any importance.

Mr. Angland: A thrombus caused from a similar situation, delayed action for seven months, dropping from the vena cava into the lower leg. That is the case the doctor made in his case in chief.

The Court: That is the case the doctor made in his case in chief.

Mr. Angland: If this evidence has any value, it will have to be based on that.

The Witness: No; this Dr. Crane——

The Court: I'll tell you, I don't need any further discussion on this. [449]

Mr. Doepker: No.

The Witness: This doctor——

Mr. Angland: I am going to object to him going further. Your Honor has admitted the document.

The Court: I have admitted it for the purpose of illustrative cases, and I will look them over, and if they appeal to me as having weight in this case, then I will advise the Government, so the Government can have an opportunity to present some discussion on the thing. Otherwise, we are just going into a whole new line of testimony here.

Mr. Angland: We are going into an entirely

(Testimony of C. H. Horst.)

different theory if we adopt something else, trying a different lawsuit than we started out to try.

Mr. Doepker: For the record, then, we are offering an article in the New England Journal of Medicine, entitled, "Deep Venous Thrombosis in the Leg Following Effort or Strain," and particularly in that article a table on page 531 listing 10 cases of deep venous thrombosis in the leg following uncomplicated effort or strain, as reported in the literature since 1930.

Mr. Angland: Certainly, your Honor, that goes in subject to our objection.

The Court: Yes, I will receive it in evidence subject to the opportunity of the Government to explain or otherwise further object to it. [450]

(Article in The New England Journal of Medicine, dated April 3, 1952, entitled, "Deep Venous Thrombosis in the Leg Following Effort or Strain," was here received in evidence, and the same is on file in the Clerk's office in this cause.)

Mr. Doepker: You may inquire.

Cross-Examination

By Mr. Angland:

Q. Dr. Horst, a few minutes ago, you compared, I believe, Mr. Hennessey's condition to infantile paralysis, is that right? A. That's right.

Q. What is the nature of infantile paralysis, the

(Testimony of C. H. Horst.)

disease itself?

A. Well, the disease, the etiological factor is not known, but the pathology is known. Those anterior horn cells in the cords that supply the muscles of the legs, or lower motor neurons, they call them, and when they are attacked by the factor that causes this disease and destroyed, in consequence the muscles that they enervate die.

Q. That is the situation in infantile paralysis or polio, it is a disease or destruction of the muscles, isn't it? It is actually a destruction of the muscular system, isn't it, Doctor?

A. It is primarily in the nervous tissue because the nerve cell is the first to be destroyed.

Q. Actually, Doctor, there is no sensory change in infantile [451] paralysis, is there? There is actually no sensory change, is there? Answer that question.

A. Some cases do have pain, yes.

Q. In infantile paralysis?

A. Yes, some cases have pain.

Q. How many cases have you treated, Doctor, and found sensory change?

A. I don't know; I would say there would be change.

Q. Have you ever treated a case of infantile paralysis in which you found a sensory change?

A. No, I haven't had very much to do with that.

Q. Have you had anything to do with it?

A. I have seen cases, yes.

Q. Have you seen sensory changes, Doctor?

A. I say this about the sensory changes, sir, that

(Testimony of C. H. Horst.)

there are sensory changes in these cases that do suffer pain. When they suffer pain, they do have sensory changes.

Q. What cases are you talking about?

A. Infantile paralysis. In this case I am talking about sensory changes.

Q. How many cases of infantile paralysis have you treated? A. None.

Q. None; very well. Doctor, you don't know, then, you haven't treated a patient for infantile paralysis, so you haven't actually determined whether there are sensory changes [452] in infantile paralysis?

A. No, but I do know they feel, do suffer quite a number of times.

Q. There isn't any question about them suffering?

A. If they suffer, they have sensory change. That sensory change is pain.

Q. How did you test Mr. Hennessey's sensory changes, with a needle and so forth, on the bottom of his foot?

A. I did that. I tested it with a pin, and with a little cotton wrapped on a stick. I went up and down his leg. He could feel.

Q. You found it very sensitive?

A. The point with Mr. Hennessey and with this case is that there are sensory nerves, which you will find it in my testimony, associated with blood vessels besides dilator and contractor nerves, and

(Testimony of C. H. Horst.)

I would like to read that thing to you about sensory nerves in blood vessels. That has been contested in former years, and it is only now that they are beginning to find out there are pain nerves associated with blood vessels besides dilator and contractor nerves.

Q. Dr. Horst, what your position is is that there was an effect on the spinal cord and circulatory system as it went back to the spine below the second lumbar region, is that right?

A. Oh, no, that is your theory. I said that the clot, it was in the vena cava, and that it was—I measured it to [453] you—approximately where perhaps the fourth lumbar vein comes off the vena cava. Then you come along and say in the spinal cord, in the spinal column. Suppose these veins that I designated, that there were only nerves that came down from the spinal cord; in other words, that those nerves here in the cauda equina——

Q. There is a nerve cord coming down there?

A. I don't know what you call them. I call them nerves, you call them cords. Let's call them nerve cords.

Q. Is there one nerve?

A. Various nerves, various segments.

Q. That is the way it leaves the end of the spinal cord and forms what is known as the horse's tail?

A. Cauda equina, yes, sir.

Q. That is a group of nerve cords, isn't it, each containing multiple nerves?

(Testimony of C. H. Horst.)

A. That's right, they contain multiple nerves because they come from different segments in the cord.

Q. Each one of those cords, as it comes down the cord, doesn't go, say, to the foot, you don't have a cord come out and go right straight down to the foot? A. No.

Q. You have those nerves from that cord winding around the upper part of the body, and you will find the same nerves, possibly at the buttocks and at the foot, coming out of the same [454] cord?

A. Yes, that's right.

Q. And it will wind around? A. Yes.

Q. So that if you have a blood vessel leading from the vena cava to one of those nerves or nerve cords, it then will effect every portion of that lower part of the body where that nerve cord leads the nerves, wouldn't it?

A. No, because that is a composite nerve, it is made up of many nerves, isn't it, so some of those nerves that come out, they come out from the third, fourth, or fifth spinal segments, so if you would take a nerve that came out of the fifth segment, or the fourth segment, or the third segment, supplying the nerves in the buttocks, and another nerve supplying it down below, those nerves would not have the same origin.

Q. Does the blood returning into the veins leading into the vena cava run from each nerve in the cord?

A. They accompany the nerves as they leave the

(Testimony of C. H. Horst.)

cord. There is an artery and vein that accompanies each nerve, yes. They go through, the nerves and arteries and veins go through the intervertebral disks.

Q. Is there any nerve in that horse's tail, as you call it, that would go right from one of those nerve trunks right down to the left foot; is there any nerve in there that would do that? [455]

A. I was just trying to think. Yes, there are nerves that supply the small muscles of the foot that have their origin in the lower portion of the spinal cord.

Q. Yes, but they also affect other portions of the body above that foot, they don't just run from the nerve cord down right straight down to the bottom of the foot, do they?

A. They are complex nerves. Some branch off and supply muscles above, others go down and supply muscles in the thigh.

Q. You have got an Anatomy book here, Doctor. I presume you can find just how the nerve trunks leave the spinal column, and how they wind around the lower extremities. Can't you find that diagram in that book?

A. Didn't you bring that book with you, Doepker? I never thought it would be brought up. I have a very excellent chart which is like that (indicating chart) with the nerves. I didn't bring it up.

(Testimony of C. H. Horst.)

Q. Yes, I had a good book in Billings I borrowed from Dr. Allard, but I don't have it now.

The Witness: Your Honor, could we have a recess until I brought that chart up?

Mr. Angland: I can go into something else.

The Court: We can take a short recess now, but how long is this going on?

Mr. Angland: I hope not very long. I don't want to unduly delay the matter. I think your Honor will recall that [456] Dr. Allard had with him when he testified a chart of the course of the nerve trunks and nerves as they leave the so-called horse's tail, and I just want to clarify that problem. The doctor, I think, has left a wrong impression in the record on it.

The Court: Court will stand in recess until 20 minutes after 11. Maybe you can find a chart in there that will satisfy your needs at this time.

(10-minute recess.)

Q. (By Mr. Angland): Doctor, I think you stated during the recess that we have been talking about two different things. Maybe we can get together and talk about the same thing for awhile. Your testimony is to the effect that the damage to Mr. Hennessey was in the vena cava, is that right?

A. That's right, and that is a blood vessel.

Q. That is a blood vessel with the blood flowing up into the heart?

A. That's right.

Q. You testified that there was further damage to the small blood vessels leading from the spine, is that right?

(Testimony of C. H. Horst.)

A. I testified that there was also damage to the spinal cord which was produced by emboli that came through those small vessels that supply the spinal cord.

Q. Those emboli came from the vena cava?

A. From the vena cava, that would be the origin of them. [457]

Q. And flowed into the small veins leading into the spine?

A. Then the emboli got into the circulation of the spinal cord, and not of the cauda equina, of the spinal cord.

Q. The damage, according to you, was above the second lumbar region? A. Yes, sir.

Q. It was not below the second lumbar region?

A. No, sir.

Q. Can you point out on this diagram, this chart you have, approximately where the second lumbar region is, approximately?

A. You see, this is the fifth lumbar vertebra, so this would be about the fourth, third, second, and first, it would be about there (indicating).

Q. Then you are now testifying that there was damage above that point in the vena cava?

A. I am now testifying that the nerves that supply the muscles of the leg and have their origin in the gray matter of the spinal cord were destroyed by emboli that formed and found their way into the gray matter of the spinal cord.

Q. From the vena cava?

(Testimony of C. H. Horst.)

A. From the vena cava, that would be the origin of the emboli.

Q. In each instance, then, for the emboli to do that, they had to flow against the stream of the blood, didn't they? A. As I pointed out——

Q. Before you go any further, isn't that the fact? [458] A. Yes, that is the fact.

Q. They would have to flow against the flow of blood?

A. There is another factor in there, that this clot covered the openings of the veins that return to the vena cava from the spinal cord.

Mr. Angland: And let the record show that he is pointing to a region below what he has designated as the second lumbar region.

The Court: Very well. Now proceed.

A. So that the clot, before it moved, had occluded the opening of these small veins into the vena cava, and that in all likelihood the thrombus went into these veins as well, so that when there was a dislocation of the clot into the iliac veins, that tore loose from its attachment to the wall of the vena cava, and in this disturbance, those clots in that vein got in this complex venous plexus that surrounds the spinal cord and got into the gray matter of the spinal cord and destroyed some of the anterior horn cells. There was an awful commotion there in the nerve elements of the spinal cord that allowed all these spasms to occur, and the reaction of such physiological activity would cause

(Testimony of C. H. Horst.)

suffering likewise of the vessels within the cord, and that is how the destruction of these cells took place.

Q. Now, Dr. Horst—just have the stand there—the fact is that this venous structure, is that what you call it? [459]

A. You can call it structure.

Q. —that you are referring to as having been partially occluded and later receiving some of these emboli were portions of the venous structure that refer to the nerve trunks after they had left the spinal cord, rather than to the spinal cord itself?

A. The trunks would not be involved in a thrombus. A thrombus forms in a vessel. The nerves that come down wouldn't be affected at all, even if there was a big clot in that spinal cord.

The Court: Isn't this cross-examination, counsel, directed to the witness' direct testimony?

Mr. Angland: No; it is connected to this rebuttal, your Honor. He went into the matter on rebuttal.

The Court: Yes.

Mr. Angland: And he had a diagram of the circulatory system all down the spinal cord, and referred to the whole venous structure along the whole spinal cord. I am trying to find out, your Honor, just what the doctor means by that, because it appears to be inconsistent with his direct testimony. He is now talking about damage above the second lumbar region where the spinal cord termi-

(Testimony of C. H. Horst.)

nates. His testimony on direct, as my memory serves, was damage in the vena cava below the second lumbar region, and now it affects either the nerve trunks or the spinal cord above, and I am trying to get at the circulatory [460] system below the spinal cord.

The Court: Very well.

A. Now, I will tell you, if you can understand that there is a plexus of veins that surrounds the spinal cord from the base of the brain to the coccyx. It doesn't make any difference where that plexus is entered by a thrombus, it won't be cut off, it will circulate in so many ways that nobody could tell where it would lodge unless they considered the damage that occurred from the lodging of the embolus, so that I claim that this leg has been affected because the nerve cells that supply the nerves that supply the muscles of the leg have been destroyed, some of them have, not all of them. That is why that foot is in a state of spasticity. That is why that man cannot extend his foot, but it is continually in a state of spasm, and that spasticity is due to the fact that sensory impulses coming from the damaged leg that go to the cord are not inhibited by the brain which connects to the tract, nerve fibers, called upper neurons.

Q. Let me interrupt you at this point, Doctor; we are going to drift a little too far here if we don't break this down a little. We would like to finish it some time. Doctor, referring back to your direct

(Testimony of C. H. Horst.)

examination, my memory of that is that you said there was a thrombus that formed in the lower portion here of the vena cava before it divided, so to speak? A. No, I didn't. [461]

Q. You didn't have any idea of a thrombus forming in the vena cava?

A. I said a thrombus formed, and I explained how the pressure came down. It met here at the termination of the vena cava, and it went on each side; because it was such a terrific force, it also split the intima of these veins, the vena cava and the right and left iliac veins. Those clots gradually spread out like a saddle; then when that slipped down; then when that slipped down—this was my idea of the formation of the clot and how it got into the spinal cord. It has to get in there through veins or arteries, it has to get there through the veins, and that clot, it was presumed that that clot went right back into the plexus of veins surrounding the spinal cord. Therefore, no matter where you try to figure out it entered, clots could go up or down. They seem to have chosen the anterior gray matter.

Q. Now, is it your testimony that there were numerous clots?

A. No, I don't know how many clots there were. My theory was, it was my contention, and it is now, that the interior of the vena cava and the vessels going off from it, namely, the right and left iliac veins, were distended excessively when this man

(Testimony of C. H. Horst.)

fell on him, and those little rents in the intima caused thromboplastin to come out, and I explained how clots form, and after that, those clots kept building up, building up, until they encroached on all the area contused or injured. [462]

Q. You are not telling us that on June 2nd, 1949, numerous clots of blood formed in here, and they just floated up and down the vena cava and into the other veins?

A. They could have done that, but my idea is they didn't. I didn't say anything about clots moving up and down. I told you the intima was injured; after it was injured, then the process of forming clots began.

Q. The thrombus began to form, isn't that what began to form?

A. Yes, what is a thrombus? What do you talk about, a thrombus?

Q. I don't know.

A. Just a minute, you can't talk about it and not be able to define it. That is the reason we don't get along.

The Court: Doctor, you have to realize that counsel doesn't have to define it. He can ask you. You don't have to accept his understanding, in any event, if he could explain it to you.

A. Thank you, sir. The vena cava and the right and left iliac veins, when this fall hit Mr. Hennessey, this man hit him, it went split, made little splits in the intima, or general contusions. Then

(Testimony of C. H. Horst.)

thromboplastin poured out from those cells, and the cells that were in the blood began to seal these places up by deposition in the walls of a vein, and that is a thrombus. [463]

Q. Now, Doctor, your point now is that there were numerous thrombi developed in the vena cava?

A. If you want to have each crack and each contusion a thrombus, then there were numerous thrombi. There couldn't be anything else. There was a contusion of the lower portion of the venous tree.

Q. Doctor, just so we will understand what your testimony is here, if it isn't your idea that there were numerous thrombi developed in the lower part of the vena cava and the right and left iliac veins, if there weren't numerous thrombi in there, is it your idea and testimony that there was one large thrombus developed?

A. No. I will explain it once more.

Q. There has got to be one or more.

A. There were multiple lesions within the vena cava and the right and left iliac veins.

Q. Let me stop you right there——

A. There are multiple lesions, so the blood deposited multiple clots. Now, those are so close together they finally fuse.

Q. They finally fuse? A. Yes.

Q. Is it your opinion they fused in Mr. Hennessey's case? A. Yes.

Q. They fused in Mr. Hennessey's case?

A. They couldn't help it. [464]

(Testimony of C. H. Horst.)

Q. When do you think that that large thrombus developed, after they had fused and became one large thrombus? A. Yes, sir.

Q. When do you think they exploded so you had various clots floating around in the upper part of the vena cava?

A. You said they were floating around.

Q. You have some of them up here in the area above the second lumbar region going into the small veins leading into the spinal cord.

A. You are talking about the spinal cord and clots. Keep it confined to the clots. Ask me about the clots, please?

Q. What happened to this large thrombus that developed in the vena cava?

A. When Mr. Hennessey got out of bed on that fatal day in the hospital and he got a pain in his right leg, that was the time that the clot dislocated and went down into his right iliac vein. Then, when he was assured by the nurse that all was well, he returned and it went down into his left iliac vein, so, therefore, the veins that emptied into the clot, that were in my opinion occluded by the clot, were disturbed because they were, I think, attached to the clot.

Q. When did the clots you spoke of a few minutes ago go into the small veins leading from the spinal cord to the vena cava, when did those small clots go into those veins?

A. The clots—I assume that the veins that led

(Testimony of C. H. Horst.)

into the vena [465] cava that were occluded by the clot couldn't work because there was no exit for them, so the blood backed up.

Q. There was an occlusion then?

A. It had to be occluded. The little veins going into the vena cava couldn't go in because the clot occluded them, so when the clot slipped, that clot that was in the small vein could have been cut off and could have been loosened up, and it could have got into the circulation that surrounds the spinal cord.

Q. In the portion of the spinal cord above the second lumbar region?

A. Yes, it doesn't make any difference.

Q. It could have gotten up there.

A. The plexus is so complex that anything that got within that plexus of veins could land anywhere.

Q. In that plexus of veins?

A. Yes, there was nothing to obstruct it.

Q. Just a minute——

The Court: One at a time. When counsel is asking a question and when the doctor is putting in his answer to the question, don't stop him. Let him make a complete answer.

Mr. Angland: I was trying to shorten it so we wouldn't lose our train of thought.

The Court: It takes more time interrupting so we don't know what is going on, so one at a [466] time.

(Testimony of C. H. Horst.)

Q. Wouldn't the plexus of veins all drain into the vena cava, isn't that right?

A. Eventually they do, yes, those up above drain into the superior vena cava and those from the lower drain into the lower vena cava, yes, that's right, and then there are accessory veins, they call them azygos veins, that help out to drain the portion of the chest where the heart is, and they finally go up and finally terminate into the vena cava.

Q. Did you find in the hospital records of Mr. Hennessey that any of these clots you are speaking of went up the vena cava and deposited in the heart or lungs?

A. You would put—no.

Q. Is there anything in the chart to indicate that happened?

A. No, there is nothing in the chart to indicate the emboli went up and down the vena cava or up and down the aorta, but there is in the chart a paralysis of these legs and uncontrollable development of spasms in the leg. That is there, that has to be explained. Why does that do that? Why does he have a flexed foot? That is the thing we are trying to explain with these emboli.

Q. Doctor, you read from a book a few minutes ago about a young boy, I believe you said he was 17 years of age?

A. Yes, sir.

Q. And I think you said that 87 days after he was admitted to the hospital for what was diagnosed as mucous colitis, then [467] he developed symptoms of an embolus?

(Testimony of C. H. Horst.)

A. Yes, the symptoms were very similar to Mr. Hennessey's symptoms. They came like that.

Q. Did Mr. Hennessey have any mucous colitis?

A. No.

Q. That wasn't present?

A. That wasn't the purpose of exhibiting this case at all. This case was exhibited to show that in the case of an embolus of either vein or—in this case, of a vein, that the leg would be white, that there wouldn't be any pulsation in it, you couldn't find the artery beat in his foot, popliteal space, or in his groin, and the other factor in relation to Mr. Hennessey was that it didn't occur until at least 81 days after the mucous colitis had subsided. We are making the point that that case was proven to be a clot in the venous side and not in the arterial side, and that it has contractions of the peripheral vessels in the foot and it had no pulsations in the arteries, and those are the very points you make in your diagnosis of thrombosis on the arterial side, so they were also present when the thrombosis was on the venous side.

Q. That was a thrombus that developed in the lower leg?

A. Yes, and it was proven by X-ray that it was in the venous side.

Q. Did that tell you in that story what caused the thrombus?

A. No, but I explained that, and that is what everybody has [468] to go back to. Why don't blood clot in our veins, in our arteries or our veins?

(Testimony of C. H. Horst.)

Q. Was there anything in that medical history of that case to show injury to the 17-year old boy?

A. No, I don't find that at all. It did show this: There was no pulsations in the peripheral vessels of the leg, and the leg was pallid, and it pointed out specifically that the doctor said there was a venous thrombus in his opinion, so the other doctors went on to prove it, and they did.

Q. In that case they pointed out the development of an unusual collateral circulatory system, didn't they?

A. That's right.

Q. Did you find in Mr. Hennessey's case an unusual collateral circulatory system built up?

A. How could I? I didn't inject any dye into his venous system. That unusual collateral circulation system developed in this picture was the result of roentgenological examination. No one could tell the collateral circulation from inspection.

Q. You could if the thrombus is in the vena cava and you have an occlusion there, you can tell?

A. You can do it by referring to the diagrams in the book to see which way the collateral circulation was established, but you can't tell which way it went. There is a number of ways in collateral circulation that the blood may go around the point of obstruction. [469]

Q. What I am getting at, Doctor, in this case, you had a thrombus in the lower leg?

A. Yes.

Q. And there was an unusual collateral circulatory system built up. In Mr. Hennessey's case, you

(Testimony of C. H. Horst.)

had a thrombus that developed in the vena cava?

A. Yes.

Q. Now, the collateral circulatory system that would build up there is one that would be on the surface of the abdomen?

A. It would be on the pelvis, yes.

Q. And would be obvious to the naked eye?

A. In the pelvis?

Q. Down on the abdomen?

A. There might be some superficial veins dilated in the pelvis. The only way you could show that would be injecting dye into the venous system and study the roentgenrams developed from it.

Q. Doctor Horst, if you had an occlusion of the vena cava and a collateral system builds up, it would develop veins on the surface of the abdomen?

A. It would develop a few veins, but not very many, it wouldn't tell you a thing about the collateral circulation. It wouldn't tell you which veins were occupied in developing collateral circulation.

Q. You wouldn't have veins on the abdomen more obvious than [470] those on the back of my hand?

A. You might have.

Q. If I have a thrombus in my vena cava that causes an occlusion, it will develop the veins on the surface of the abdominal walls, the surface of the abdomen, so they will be more pronounced and more obvious than are the veins on the back of the hand, isn't that true, Doctor, that would be your collateral circulation?

(Testimony of C. H. Horst.)

A. That would be part of your collateral circulation; that would be the peripheral part, but the main part would be in the pelvic veins. It would have some on the surface, yes.

Q. Quite a lot?

A. There is only one vein, there is two veins, one that comes down from the chest, and one from the abdomen, the epigastric veins would be dilated; there would be signs there was collateral circulation building, but if you had that, you wouldn't know where the clot was unless you have evidence such as we have in this case.

Q. When you have a collateral circulatory system building up, you think you have a thrombus, don't you?

A. That would indicate it, yes, that is why it is built up. The blood tries to find a new way so it goes around that obstruction.

Q. So that is what they found in the case you read from?

A. Yes, sir, that's right. [471]

Q. And in Mr. Hennessey's case, did you find the collateral system building up at all, or is there anything in the hospital records to show that Dr. Stokoe found that condition when he was treating Mr. Hennessey in the hospital?

A. No, he didn't find it. Why didn't he find it? Because he was entirely engaged in relieving this man's pain. He couldn't feel a pulse in **any part** of the leg, so he assumed that it was an arterial occlusion. Then I came along, and I don't find anything in the arterial system to warrant formation

(Testimony of C. H. Horst.)

of a clot, but I do find it in the venous side, and I have explained that so many times how that clot forms on the venous side, and I have also told you that clots on the arterial side usually throw the clot into the brain or into the kidney, or anywhere, but venous clots are thrown up into the lung, but this clot was so heavy it didn't go up, and it slipped down, and that is why Mr. Hennessey has this condition, and he has pain in his leg all the time, and I think it would be very appropos to inject his veins and take roentgenograms of it, and you would see where the clots were, because certainly lots of clots are still present in his venous system.

Q. Doctor, in this case history you read from, you referred to canalization developing there after he had been in the hospital for five weeks, is that right? A. That's right.

Q. Is it your idea that canalization developed in Mr. [472] Hennessey's thrombus?

A. Yes, it could be canalized. When I was describing this clot in Billings, I said the blood could go around the side of the clot. It was my idea it went around the side in the vena cava, that it went around the side of the vena cava, but it went through the vena cava, which is nature's way of making a hole through a clot, that is canalization, then it could be canalized. I don't say it couldn't be.

Q. Is it your idea it was canalized in Mr. Hennessey's case?

A. If canalization means a canal through the

(Testimony of C. H. Horst.)

clot, that is all supposition, but this I do know? That the blood did go around the clot.

Q. I would like you to answer my question, Doctor.

A. Well, a canalization, it could have been canalized.

Q. It could have been in Mr. Hennessey's case?

A. Yes, sir, and when it slipped down, it could have occluded the canalization there and obstructed it. The canalization could have gone down through the main clot of the vena cava and could have been continued through each of the iliac veins.

Q. Before you develop canalization, you have a complete occlusion?

A. No, we have said he didn't have it. You could have it, and if you did have, you would have gangrene.

Q. You would have considerable swelling? [473]

A. If you didn't have some way for the blood to get back, you would have gangrene, and if the blood had acted as it usually does in a vein, it would have gone up to the lung and you would have a pulmonary thrombosis there.

Q. Doctor, before you develop canalization, the thrombus grows and grows until it reaches the point, until it is closing off the vena cava, isn't that right?

A. That would be right if it did close, but there is nothing to show it ever did close.

Q. Well, after that happens, and about the time it closes off, you begin to develop your canalization?

(Testimony of C. H. Horst.)

A. That's right.

Q. That is a canal right through the thrombus?

A. That's right.

Q. And during that time you develop these collateral circulatory systems, don't you?

A. That's right.

Q. You also when you have that occluding of the vena cava would have a swelling of the lower extremities, wouldn't you?

A. If the collateral circulation was inadequate, you would have swelling, but if it were not, if the canalization was adequate to meet with the flow of blood, you wouldn't have swelling. If the canalization was inadequate, you would have swelling of the leg because it would dam the blood back on the foot. [474]

Q. You don't have canalization until you close it off, until the blood develops a new canal through there?

A. I don't think there is anything to show there was a complete obstruction of the vein. The man never suffered one bit of swelling of his leg before this thing happened, but he had a clot in there, so how do you explain that, except that the blood must have gotten around alongside of the clot or by canalization.

Q. In Mr. Hennessey's case?

A. In Mr. Hennessey's case. He didn't have a thing to indicate he had anything wrong with his leg.

(Testimony of C. H. Horst.)

show whether the embolus was in the vein or the artery?

A. Well, the patient was treated for an embolus which might be either in the artery——

The Court: Let's just get to the question. He said what would the symptoms be that would differentiate an arterial embolus from a venal embolus after the 36-hour period?

A. There wouldn't be any symptoms at all; there wouldn't be any new symptoms, but the symptoms or signs of pulseless [477] vessels would change, because they would have to be present, or the patient would die, and, therefore, if it was on the arterial side, gangrene would develop, and so that would develop on the venous side. Now, as they who were treating it described it, there was a line of demarcation in the lower part of the leg, it was white, and as time went on, the line of demarcation spread downwards. Finally, within 24 or 36 hours, the whiteness had disappeared entirely, but the pain didn't disappear, but the line of demarcation did, and pulsation came back in the leg.

Q. Doctor, I am trying to find out what the symptoms would be, what a doctor would notice and observe at the end of the 36-hour period. The symptoms, you said, are the same, and you set your maximum at 36 hours that they would remain the same. What precisely would be the symptoms to demonstrate to a doctor that the embolus would be in a vein or an artery?

A. There wouldn't be any difference because both would be the same. The only way a doctor

(Testimony of C. H. Horst.)

could differentiate between the arterial and venous system would be X-ray and the study of his history. The history of this case shows the arterial side was devoid of any possibility of thrombosis.

Q. The statement in the case history you read to first from a thrombus in the vena cava or aorta, the effect that the symptoms would be the same at actually "at first" is superfluous? The symptoms would be the same; you would not be able to tell the [478] difference.

Mr. Doepker: I object to the form of that question. This doesn't relate to a comparison of the symptoms at first.

The Court: The doctor did.

Mr. Angland: The doctor did, I am sure. He said the symptoms at first would be the same in the vena cava or aorta. I am trying to find out what "at first" means. I am trying to demonstrate what the symptoms are——

The Court: The doctor has now said there wouldn't be any symptoms that would differentiate between a vena cava and an arterial thrombus.

Mr. Angland: If that is the doctor's answer, all right.

The Court: That is as I understand.

The Witness: That is it; I am talking about the beginning, or the onset of the thrombi.

Mr. Angland: That is all.

Mr. Doepker: I don't have any.

The Court: That is all, Doctor.

(Witness Excused.) [479]

Q. I now present to you, Mr. Wheeler, Plaintiff's proposed Exhibit 23, and ask you whether that is the identical copy of the original account? [303]

A. It is.

Mr. Doepker: We offer in evidence this exhibit.

Mr. Angland: That is all.

The Court: Admitted.

PLAINTIFF'S EXHIBIT 23

“Billings Deaconess Hospital, Billings, Mont.

Date: 1-3 1950. Hour: 8:10 P.M. Room: 208. Rate:

Physician: Stokoe. Case No.

Patient: Hennessey, Joseph P. Age: 32. Sex: M. Nationality:

S(MW)D.....

Home Address: 1221 Grand Ave., Billings, Montana. How Long:

Phone: 7827. Date of Birth: Jan. 17, 1917. Place: Montana.

Employer: Position: Dept.:

Medical: X. Surgical: Obstetrical: Pediatrics:

Emergency:

No. of Dependent Children:

Relatives, Nearest: Mrs. Geraldine. Address: Same. Phone:

How Related: Wife.

Father's Name: Edwin D. Address: Deceased. Birthplace: N. York

Mother's Maiden Name: Mary Lenihan. Address: Butte, Mont.

Birthplace: Mont.

Patient's or Wife's Maiden Name: Geraldine Ede.

Former Admissions—Self: No. Other Members of Family: No.

When?

Church: Catholic. Lodge: Elks—Eagles.

Payment Plan: No B.C. (Other): Cash on Dismissal.

If an injury, did accident occur on job? If not on job, was
second party involved?

Guarantor: Joseph P. Address: Billings. Phone, Business:

Home:

Occupation: Attorney at Law. Employer: Self. How Long:

I hereby promise to pay for Hospital Service Rendered the Patient
hereon:

/s/ JOSEPH P. HENNESSEY,

Guarantor.

/s/ C. RAINEY,

Registrar.

(Reverse Side)

E 1/3/50—Room 950

D 1950 1/3 to 1/31 1/31 to 2/28 2/28 to 3/12

Day Rate Service

Room 211	\$266.00	\$266.00	\$114.00
Dressings		2.75	1.50
Pharmacy	167.50	20.30	.85
Laboratory	99.00	11.00	.....
Physio-Therapy	2.00	40.00	2.00
X-ray	30.00	25.00	.....
EKG	7.50	.....	.....
	<hr/>	<hr/>	<hr/>
	\$572.00	\$365.05	\$118.35

	Debits	Credit	Balance
1/31/50—Entry page R1408-A	\$572.00	.....	\$572.00
2/28/50—Entry page R1425	365.05	.....	937.05
3/ 7/50—Entry page C1790		250.00	687.05
3/12/50—Entry page R1433	118.35	.....	805.40
5/26/50—Entry page C1852		100.00	705.40

Address: Stapleton Bldg.

Name: Hennessey, Joseph P. [305]

HARRY C. WHEELER

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Doepker:

Q. Please tell the Court your name?

A. Harry C. Wheeler.

Q. What, if any, business or occupation do you have? [302]

A. I am the administrator of the Billings Deaconess Hospital.

Q. As such administrator of the Billings Deaconess Hospital, do you have records of the hospitalization of Joseph P. Hennessey from the 3rd of January, 1950, through to the 12th of March, or approximately those dates? A. We do.

Q. Was that record kept in the usual course of business of the hospital? A. It was.

Q. Was it kept correctly? A. It was.

Q. This statement represents the charges made itemized, is that right? A. That's right.

Q. You have both the original and an exact copy, is that right? A. That's right.

Q. You would prefer to retain the original and substitute the exact copy, is that right?

A. That's right.

Mr. Doepker: Do you have any objection?

Mr. Angland: I have no objection at all. [303]

H. EDGAR STRAHL

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Angland:

Q. State your name, please?

A. H. Edgar Strahl.

Q. Where do you live, Mr. Strahl?

A. Pocatello.

Q. What official position, if any, do you have with the Government?

A. Special Agent, Federal Bureau of Investigation.

Q. In the course of your duties, Mr. Strahl, have you been [222] assigned to do some investigating for the Government in this case?

A. I have.

Q. This case now on trial. Did you take some photographs during the course of your investigation?

A. I did.

Q. And various measurements?

A. That is correct.

Q. I will hand you, Mr. Strahl, what has been identified as Defendant's Exhibit 4, and ask you if you know what that is?

A. That is a photograph of the men's wash room at the airport known as Phillips Field in Pocatello, Idaho.

Q. Does it accurately portray what it purports to show?

(Testimony of H. Edgar Strahl.)

A. As of the time the photograph was taken, yes.

Q. When was the photograph taken?

A. On January 5th of this year, 1953.

Mr. Angland: Before making the offer, I wish to advise the Court I will connect this up with another witness to show the condition of the washroom on June 2nd, 1949, and with that understanding, I will at this time offer in evidence Defendant's Exhibit 4.

Mr. Doepker: We won't have any objection if it is connected up.

The Court: Very well.

(Plaintiff's Exhibit 4, being a photograph of the [223] men's washroom at the airport building, Pocatello, Idaho, was here received in evidence, and the same is on file in the Clerk's office in this cause.)

Q. Now, Mr. Strahl, I'll hand you what has been identified as Defendant's Exhibit 8, and ask you if you know what that is?

A. That is a photograph of another angle of the men's washroom at the airbase known as Phillips Field, Pocatello, Idaho.

Q. When was that photograph taken?

A. January 5th, 1953.

Q. Does that accurately portray what it purports to show? A. It does.

Mr. Angland: I will offer it in evidence at this time, with the same understanding as the other photograph, as Defendant's Exhibit 8.

(Testimony of H. Edgar Strahl.)

Mr. Doepker: No objection if it is connected up.

The Court: Very well.

(Defendant's Exhibit 8, being a photograph of the men's washroom at the airport building, Pocatello, Idaho, was here received in evidence, and the same is on file in the Clerk's office in this cause.)

Q. I'll hand you, Mr. Strahl, what has been identified as Defendant's Exhibit 9. Do you know what that is?

A. That is a photograph of one portion of the men's washroom, Pocatello Airport, Pocatello, Idaho.

Q. Does it accurately portray what it purports to show? A. It does.

Q. When was that photograph taken? [224]

A. This was taken the approximate dates of August 17th to 20th of 1951.

Mr. Angland: With the same understanding, your Honor, I will offer Defendant's Exhibit 9.

Mr. Doepker: No objection, your Honor.

The Court: Very well.

(Defendant's Exhibit 8, being a photograph of a portion of the men's washroom at the airport building, Pocatello, Idaho, was here received in evidence, and the same is on file in the Clerk's office in this cause.)

The Court: Very well.

Q. Did you take other photographs, Mr. Strahl?

A. I have.

(Testimony of H. Edgar Strahl.)

Mr. Angland: I don't know how many we are going to need, so I think I had better offer them all, your Honor.

The Court: I wonder if it is necessary. Let me see them.

Mr. Angland: Some of them your Honor won't be able to understand without having looked at the diagram and Mr. Livingston's deposition.

The Court: If that is the situation you had better decide what you want and if you need them all, why offer them.

Mr. Angland: I am inclined to think we need them all. Mr. Doepker, do you want to take a quick look at them here?

Q. Mr. Strahl, I'll hand you what has been identified as Defendant's Exhibit 11, and ask you if you know what that is? A. I do.

Q. And does that accurately portray what it purports to [225] show? A. It does.

Q. And what is that?

A. It is a photograph of the lobby of the airport located at Pocatello, Idaho, taken from the approximate position of Western Air Lines' counter—that is where I was standing when I took the picture—directing the camera to the men's washroom and Weather Bureau entrance from the lobby.

Q. When was that picture taken?

A. January 3rd, 1953—I beg your pardon, correction, January 5th, 1953.

(Testimony of H. Edgar Strahl.)

Mr. Angland: With the same understanding, I would like to offer that.

The Court: Very well.

(Defendant's Exhibit 11, being photograph of the lobby of the airport building at Pocatello, Idaho, was here received in evidence, and the same is on file in the Clerk's office in this cause.)

Q. Now, with reference to Defendant's Exhibit 11, would you just mark with an arrow the entrance to the men's washroom? A. I have.

Q. Mr. Strahl, I'll hand you what has been identified as Defendant's Exhibit 12, and ask you if you know what that is?

A. Another photograph of one portion of the men's washroom, Pocatello City airport, Pocatello, Idaho.

Q. Does that accurately portray what it purports to show? [226] A. It does.

Q. When was that photograph taken?

A. January 5th, 1953.

Mr. Angland: With the same understanding, we will offer Defendant's Exhibit 12 in evidence.

Mr. Doepker: No objection.

The Court: Admitted.

(Defendant's Exhibit 12, being a photograph of a portion of the men's washroom at the airport building, Pocatello, Idaho, was here received in evidence, and the same is on file in the Clerk's office in this cause.)

(Testimony of H. Edgar Strahl.)

Q. I will hand you, Mr. Strahl, what has been identified as Defendant's Exhibit 13, and ask you if you know what that is? A. I do.

Q. Does that accurately portray what it purports to show? A. It does.

Q. What does that photograph show, Mr. Strahl?

A. It is a photograph of the attic portion of the City Airport at Pocatello, Idaho. It was taken from the attic entrance, and in taking the photograph, I was standing in the room where the theodolite room is.

Q. What date did you say this was taken?

A. This was taken during August, 1951, the exact date I don't have at this time.

Mr. Angland: I might state to both Court and counsel there is some change as to conditions, so I will offer this for [227] illustrative purposes.

Mr. Doepker: We have no objection to it being offered for illustrative purposes, subject to its being explained if the witness is able to explain it.

The Court: Very well.

(Defendant's Exhibit 13, being a photograph of the attic of the airport building at Pocatello, Idaho, was here received in evidence, and the same is on file in the Clerk's office in this cause.)

Q. I will hand you what has been identified as Defendant's Exhibit 14. I will ask you if you know what that is? A. I do.

(Testimony of H. Edgar Strahl.)

Q. Does that accurately portray what it purports to show? A. It does.

Q. When was it taken?

A. During August, 1951.

Q. What does it purport to show?

A. It is the opening into the attic portion of the Pocatello airport at Pocatello, Idaho. It was taken from the theodolite room, and approximately eight to 10 feet from the attic doorway, pointing into the attic.

Mr. Angland: On the same basis, I will offer this, for illustrative—Exhibit 14 for the Defendant, for illustrative purposes, with the understanding we will connect it up.

Mr. Doepker: No objection.

The Court: Very well. [228]

(Defendant's Exhibit 14, being a photograph of the attic of the airport building at Pocatello, Idaho, was here received in evidence, and the same is on file in the Clerk's office in this cause.)

Q. I hand you, Mr. Strahl, what has been identified as Defendant's Exhibit 15, and ask you if you know what that is? A. I do.

Q. Does that accurately portray what it purports to show? A. It does.

Q. When was that photograph taken?

A. During August of 1951.

Q. And what does that purport to show?

(Testimony of H. Edgar Strahl.)

A. That is a photograph of the attic doorway leading into the attic portion.

Q. Which would be the portion of the attic immediately above the men's washroom?

A. Men's washroom and lobby of the airport.

Mr. Angland: Again I will offer that for illustrative purposes with the understanding we will connect it up.

Mr. Doecker: No objection, your Honor.

The Court: It is so admitted.

(Defendant's Exhibit 15, being a photograph of the attic of the airport building at Pocatello, Idaho, was here received in evidence, and the same is on file in the Clerk's office in this cause.)

Q. I will hand you, Mr. Strahl, what has been identified as [229] Defendant's Exhibit 16, and ask you if you know what that is? A. I do.

Q. Does that accurately portray what it purports to show? A. It does.

Q. And what is that a photograph of?

A. The photograph is taken in the attic of the Phillips Field Airbase at Pocatello, Idaho, standing inside the attic and pointing the camera toward the attic entrance and into the theodolite room. There is a person, I notice, standing there at the entrance-way for the purpose of giving an idea of the height of the doorway there.

Q. When was that photograph taken, Mr. Strahl? A. During August, 1951.

(Testimony of H. Edgar Strahl.)

Mr. Angland: With the same understanding that this is for illustrative purposes and that it will be connected up, it is offered.

Mr. Doepker: No objection.

The Court: It is so admitted.

(Defendant's Exhibit 16, being a photograph of the attic of the airport building at Pocatello, Idaho, was here received in evidence, and the same is on file in the Clerk's office in this cause.)

Q. I will hand you, Mr. Strahl, what has been identified as Defendant's Exhibit 17, and ask you if you know what that is? A. I do.

Q. Does that accurately portray what it purports to show? [230] A. It does.

Q. What is that a photograph of?

A. A portion of the men's room, Phillips Field Airbase, Pocatello.

Q. When was that photograph taken?

A. During August of 1951.

Mr. Angland: At this time I will offer in evidence Defendant's Exhibit 17 with the understanding that we will connect it up.

Mr. Doepker: No objection.

The Court: It is so admitted.

(Defendant's Exhibit 17, being a photograph of a portion of the men's room at the airport building, Pocatello, Idaho, was here received in evidence, and the same is on file in the Clerk's office in this cause.)

(Testimony of H. Edgar Strahl.)

Q. Mr. Strahl, did you take—I beg your pardon, I thought I had all the photographs. I'll hand you, Mr. Strahl, what has been identified as Defendant's Exhibit 18, and ask if you know what that is?

A. I do.

Q. Does that accurately portray what it purports to show? A. It does.

Q. When was that photograph taken?

A. During August, 1951.

Q. What is it a photograph of?

A. A portion of the men's room located at the City Airport, [231] Phillips Field, Pocatello, Idaho.

Mr. Angland: With the understanding we will connect it up, I offer it.

Mr. Doepker: No objection.

The Court: It is so admitted.

(Defendant's Exhibit 18, being a photograph of a portion of the men's room at the airport building, Pocatello, Idaho, was here received in evidence, and the same is on file in the Clerk's office in this cause.)

Q. I will hand you, Mr. Strahl, what has been marked as Defendant's Exhibit 19, and ask you if you know what that is?

A. Yes, that is a portion of the men's room in the Phillips Airbase, Pocatello, Idaho.

Q. When was that photograph taken?

A. January 5th, 1953.

Q. Does it accurately portray what it purports to show?

(Testimony of H. Edgar Strahl.)

A. It does, and as a matter of full explanation, the washbasin appearing therein is located at the northwest corner of the washroom.

Mr. Angland: With the understanding that we will connect it up, I will offer in evidence Exhibit 19.

Mr. Doepker: No objection.

The Court: Admitted.

(Defendant's Exhibit 19, being a photograph of a portion of the men's room at the airport building, Pocatello, Idaho, was here received in evidence, and the same is on file in the Clerk's office in this cause.) [232]

Q. I will hand you, Mr. Strahl, what has been identified as Defendant's Exhibit 20. Will you state whether or not you know what that is?

A. I do.

Q. Does that accurately portray what it purports to show? A. It does.

Q. Did you take that photograph?

A. I did; it was taken—it is a portion of the theodolite room in the City Airport, Phillips Field, Pocatello, Idaho.

Q. When did you take that photograph, Mr. Strahl? A. January 5th, 1953.

Mr. Angland: I'll offer that for illustrative purposes.

Mr. Doepker: No objection.

The Court: Very well.

(Testimony of H. Edgar Strahl.)

(Defendant's Exhibit 20, being a photograph of a portion of the theodolite room in the airport building at Pocatello, Idaho, was here received in evidence, and is on file in the Clerk's office in this cause.)

Q. Mr. Strahl, directing your attention to Defendant's Exhibit 4, did you make any measurements in the men's room as portrayed in Defendant's Exhibit 4? A. I did.

Q. Can you tell us how far from the northerly wall, I believe it is, the first wash basin in a southerly direction is located?

A. If I may refer to my notes that I took at the time? [233]

Mr. Doepker: Certainly.

A. The wash basin is $22\frac{1}{4}$ inches from what you describe as the north wall of the washroom.

Q. That would be the northerly edge of the washbasin?

A. Yes, the edge of the washbasin closest to the north wall.

Q. Yes. How far from the floor is the top edge of that washbasin? A. 30 and $\frac{3}{4}$ inches.

Q. How deep is the wash basin from the wall, how far——

A. The washbasin is $15\frac{1}{2}$ inches deep and $18\frac{1}{4}$ inches wide.

Q. Mr. Strahl, in Defendant's Exhibit 4, I believe, is what you are looking at, isn't it?

A. Yes.

(Testimony of H. Edgar Strahl.)

Q. There appears to be a shelf which is below the mirrors. Did you make any measurements with reference to that shelf? A. I did.

Q. How far above the washbasin is that shelf, or did you measure it from the floor?

A. I did not measure it from the washbasin; I measured it from the floor.

Q. That is just as well.

A. It is $54\frac{1}{2}$ inches, the upper edge of the shelf, from the floor of the washroom. [234]

Q. $54\frac{1}{2}$? A. Yes.

Q. That is the upper edge of the shelf?

A. Yes, where normally you would place combs and brushes and such instruments.

Q. Mr. Strahl, describe that shelf to us, will you?

A. The shelf is $7\frac{1}{2}$ inches in depth, that is, from the wall, extending out into the wash room $7\frac{1}{2}$ inches, and it is supported underneath by the usual wooden supports which are attached to the wall, and upon the shelf is a plate glass approximately $\frac{1}{4}$ -inch thick, apparently for sanitation purposes, set upon the wooden shelf. The shelf itself—I did not make exact measurements as to the length of the shelf; it extends over the three wash basins appearing in the photograph, and would approximate eight feet in length.

Q. Mr. Strahl, does the plate glass top extend out to the edge of the shelf, or is it set back from the edge?

(Testimony of H. Edgar Strahl.)

A. It follows the exact contours of the shelf.

Q. Completely covers it? A. Yes.

Q. Were you able, Mr. Strahl, to trace the pipe appearing in the right hand side of Plaintiff's Exhibit 4 up into the attic? A. I was.

Q. Can you point out the same pipe, say on Defendant's [235] Exhibit 16?

A. On Defendant's Exhibit 16, the pipe appears black in color and, in facing the photograph, it is to the immediate right of the attic opening, the same pipe, as traced. It appears in white in Defendant's Exhibit 4, and it appears to the immediate right of the wash basin nearest to the north wall.

Q. Did you measure the distance from the north wall in the men's room that the pipe is located?

A. It will have to be a matter of deduction here. It is a distance of $22\frac{1}{4}$ inches from the north wall to the nearest edge of the first wash basin. The standpipe is 9 inches from the same edge of the wash basin, leaving approximately $13\frac{1}{4}$ inches. I believe that is the mathematics of it.

Q. From the north wall?

A. Yes, to the stand pipe.

Q. Mr. Strahl, directing your attention to Defendant's Exhibit 14, can you also point out that pipe in that exhibit?

A. The pipe is black in color, and appears just inside the attic door to the immediate left of Defendant's Exhibit 14.

(Testimony of H. Edgar Strahl.)

Q. To the left of the door shown?

A. To the left of the door shown, yes.

Q. Mr. Strahl, does that pipe have elbows or bends in it?

A. No, it extends straight up from the men's wash room up into the attic portion, and after reaching the attic portion, [236] it extends for a matter of some six or seven feet, and I did not trace it thereafter. For all I know, it may have gone up through the roof.

Q. What I am interested in is whether or not there is any bend between the pipe as shown in Defendant's Exhibit 14, 4, and we had one other.

A. And 16.

Q. Yes, 14, 4 and 16.

A. No, from my investigation of the pipe, it is straight up and down.

Q. How big around is that pipe, approximately, accurately, if you know?

A. I don't know accurately. It appears to be six or eight inches around.

Q. It is a large——

A. For the purposes of drainage from the wash room there.

Q. Possibly four inches in diameter?

A. Yes, yes, that would be an approximation of it.

Q. Did you measure, Mr. Strahl, the distance from the theodolite room or the top of the vault, as we call it, to the door to the attic, as shown in Defendant's Exhibit 14?

(Testimony of H. Edgar Strahl.)

A. The measurements of the atticway?

Q. The measurement from the floor up to the entrance to the attic?

A. Yes, I understand you now. I did measure that, and it [237] is two feet, seven inches from the floor of the theodolite room to the lower portion of that entrance to the attic.

Q. Now, would you give us the dimensions of the doorway, if you actually measured it? I don't believe that is in the record.

Mr. Doepker: It was estimated in one of the depositions.

Q. Did you accurately measure it?

A. Yes, I did. The exact measurement of the opening into the attic is 18 inches wide by 45½ inches high.

Q. Mr. Strahl, as you, as a person would look at Defendant's Exhibit 16, did you measure any distances within the attic itself? A. I did.

Q. Now, will you tell us whether the joists in the attic run across that picture?

A. Parallel with the attic entrance, I believe.

Q. Parallel with the attic entrance?

A. That is correct, that is the manner in which the joists run.

Q. What is the distance from the entryway to the attic to the first joist? A. 22 inches.

Q. How far is it to the second joist?

A. 18 inches.

Q. That is from—— [238]

(Testimony of H. Edgar Strahl.)

A. If I might explain it. I measured approximately four joists. It is 22 inches to the first joist. For some purpose in building the building, they built the first joist 22 inches deep, and then I measured the next three, and they came to within $\frac{1}{4}$ inch of 18 inches, and the remaining joists appeared proportionate to the 18 inches measured, so I didn't measure any further than that.

Q. While the deposition hasn't yet been read, Mr. Strahl, it appears from the deposition of Fay Livingston, which is already introduced in evidence, that reference was made to a light plug in the wall in the theodolite room. How many light plugs are in that room, do you know?

A. There is only one outlet.

Q. Only one outlet?

A. And it will appear—

Q. Examine, please, Defendant's Exhibit 20, and you might, if it shows on there, you might mark the light plug.

A. On Defendant's Exhibit 20, the light plug appears near the top step of the steps appearing in the photograph, and I am placing an arrow pointing to the outlet as described.

Q. How far, approximately, if you know, is the light plug from the opening into the attic? Can you take two of these photographs and illustrate to the Court just how that room up there is arranged? I think it might be helpful to the Court

(Testimony of H. Edgar Strahl.)

if you take two photographs and point out how the arrangement [239] is in the theodolite room, vault we call it.

A. I might have that diagram, I could do it better. I didn't make any special tape measurements.

Q. Can you illustrate the arrangement of the theodolite room from any photographs by holding two of them together? Can you point out to the Court what that arrangement is up there? I think that might be helpful.

A. Well, Defendant's Exhibit 20 and Defendant's Exhibit 14 show the portions of the theodolite room at the extreme corners. The Defendant's Exhibit 20 shows the southwest corner of the room, and the Defendant's Exhibit 14 shows the northeast corner of the room; and the extension from the light plug to the attic entrance would be approximately 15 feet. You could clear that up better with your blueprint scale on it, I am sure. That is strictly a measurement I did not measure.

Q. Did you, Mr. Strahl, make a sketch of the stairway, the Weather Bureau, the top of the vault, or theodolite room, and illustrating the arrangement in the area that we have been talking about in this case?

A. I did, I made two rough draft drawings, one of them for more of a side view, and the other one attempting to portray the view from the top looking down upon the entire outline which appears in the diagram.

Q. Mr. Strahl, I'll hand you what has been iden-

(Testimony of H. Edgar Strahl.)

tified as [240] Defendant's Exhibit 21, and ask you whether or not that is one of the sketches to which you have made reference? A. It is.

Q. It doesn't purport to be an accurate diagram for the purposes of illustrating the physical facts down there? A. That's correct.

Q. I'll hand you, Mr. Strahl, what has been identified as Defendant's Exhibit 22, and ask you if that likewise is one of the diagrams you made?

A. That is a rough sketch attempt to portray a side section of that portion of the building of interest to the immediate case.

Q. You don't pretend to be an engineer?

A. No, I am not qualified as an engineer.

Mr. Angland: I'll offer Defendant's Exhibits 21 and 22 merely for illustrative purposes and no other purposes, your Honor.

Mr. Doecker: We don't have any objection to their being used for that purpose, your Honor.

The Court: Very well.

(Defendant's Exhibits 21 and 22, being rough sketches of a portion of the airport building at Pocatello, Idaho, were here received in evidence, and the same are on file in the clerk's office in this cause.)

Mr. Angland: I thought they might be helpful to the Court is the only reason I offer them at all. I think that [241] about covers it pretty well. You may cross-examine.

(Testimony of H. Edgar Strahl.)

Cross-Examination

By Mr. Doepker:

Q. In connection with the exhibits, Defendant's Exhibit 16, Defendant's Exhibit 14, Defendant's Exhibit 15, and Defendant's Exhibit 13, in taking those photographs, Mr. Strahl, were they taken with flashlight bulbs?

A. Yes, a Speed Graphic with flash bulb, and I have the exact readings on other notes if it would be necessary.

Q. In other words, to get the attic, you used a flash bulb to take the photographs?

A. That is correct.

Q. And with respect to Defendant's Exhibit 11, the waiting room there shown, and the door of the men's toilet with the sign above it "Men," that is directly westerly from the waiting room, is it, in the west wall of the waiting room?

A. Westerly, yes. It is actually slightly north-west; as was previously pointed out, it is not exactly on the square.

Q. I observe in the Defendant's Exhibit 11 a doorway which would be, I presume, the northwesterly corner of the waiting room, is that correct?

A. That is correct.

Q. That doorway leads where, sir?

A. It is a double doorway, and it leads directly

(Testimony of H. Edgar Strahl.)

out to the [242] airport there, where the customers go through to the waiting airplanes.

Mr. Doepker: I believe that is all.

Redirect Examination

By Mr. Angland:

Q. Mr. Strahl, did you take the other photographs with flash bulbs as well?

A. Yes, they were all taken with flash bulbs.

Mr. Angland: That is all.

(Witness excused.) [243]

LOUIS CLAYTON ALLARD

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Angland:

Q. Will you state your name, please?

A. Louis Clayton Allard.

Q. Where do you live?

A. Billings, Montana.

Q. And what business or profession are you engaged in? A. I am a physician and surgeon.

Mr. Doepker: We will admit Dr. Allard's qualifications as a physician and surgeon; that he is duly licensed to practice his profession in the State of Montana, and has been practicing in Billings, Mon-

(Testimony of Louis Clayton Allard.)

tana, and that he is a physician and surgeon—what is your specialty, Doctor?

A. Orthopedics.

Mr. Doepker: And that he is a specialist in orthopedics.

Q. And he has confined his practice to that for how long, Doctor? A. Seven years.

Mr. Doepker: Seven years.

Q. In the practice of orthopedics, what principally do you have to do with, what parts of the body?

A. Diseases and various conditions of the musculo-skeleto [396] system.

Q. If you find a crippled condition of any kind, and it appears to be due from the condition of the muscles or bones, then, that falls into the orthopedic field, is that right? A. Yes, sir.

Q. Then when you encounter a case involved around a muscular or skeletal system, Doctor, do you of necessity have to get into the nervous condition and the circulatory system?

A. Very frequently, yes, sir.

Q. You attempt to find out what has caused the condition, is that it? A. Yes, sir.

Q. Dr. Allard, have you, in the course of your studies and your practice, studied the formation of thrombosis in the blood vessels? A. Yes, sir.

Q. I wonder, Doctor, if you would just take a slip of paper and sketch a vessel, and tell us, indicate to us how the thrombus develops?

A. I have drawn what, in my artistic way, would

(Testimony of Louis Clayton Allard.)

be a cross section of a blood vessel, with the outer walls, the muscle walls, and the lining of the vessel, whether it is an artery or vein, and the lumen, or the whole in the center.

Q. Let me ask you this: Supposing you had a small blood clot, or a breaking or tearing of that blood vessel on the [397] inner wall, would a thrombus develop, in all probability?

A. In all probability, yes, it would.

Q. Will you point out, illustrate to us, how that develops?

A. Because of small changes in the wall, any irregularity, the cells, platelets, blood cells, begin to pile up, you might say catch on this roughened surface, and continue to catch and pile up on this until such time as that thrombus has gone as far as possible, which is filling the vessel completely.

Q. Completely blocked the vessel?

A. Yes, sir.

Q. Doctor, how long, according to your studies and your experience, does it take for a complete filling of, say, the vena cava to fill, if you know?

A. Well, you see, in my experience, I have never seen an occluded vena cava. However, as an estimate, depending on the condition that gave rise to the thrombus, I would estimate anywhere from several days up to perhaps 10 days time at the most for this vessel to be occluded.

Q. That would mean a blocking off of the vena cava?

A. Yes, sir, completed.

Q. Actually, however, Doctor, you have never

(Testimony of Louis Clayton Allard.)

side of the foot, the superior aspect of the foot and lower calf; the second sacro nerve, the posterior aspect of the thigh and upper calf; third sacro nerve, is closer to the anus, and the fifth, right in the region of [400] the anus.

Q. If you have, Dr. Allard, a vein or veins being occluded down in here below the second lumbar region, what would happen with respect to these nerves?

A. It would be anticipated that it would produce some swelling within the spinal canal, and, therefore, increased pressure on these nerve trunks.

Q. The nerve trunk—in other words, Doctor, when you speak of the nerve trunk coming out, you don't mean a nerve running like a fish line down to the foot, say; you mean a trunk that winds around as you have illustrated into various portions of the lower part of the body? Each one of those trunks follows through to the different portions in the lower part of the body, is that right?

A. Yes, there is a typical segment in which it is illustrated (indicating in book).

The Court: I don't wish to interfere with you, Mr. Angland, except that as far as I recall, there is no testimony with reference to the occlusion. When you speak of occlusion, that means the complete blocking, is that it?

A. Yes, sir.

Mr. Angland: I am sure, your Honor, if I go through Dr. Horst's testimony of Saturday—

(Testimony of Louis Clayton Allard.)

The Court: It is based upon the fact that he says there is occlusion? [401]

Q. You have had the opportunity to hear that testimony to some extent, Dr. Allard?

A. Yes, sir.

Q. Did you understand him to speak of an occlusion of the vessel, of the vein, leading to the spine? A. That was my interpretation.

The Court: It just occurred to me he talked about a partial occlusion and not an occlusion of the vena cava.

Mr. Angland: In the vena cava, he did say partial occlusion, but as to the vessels, your Honor, running back to the spine, he said there was a shutting off, a complete occlusion as to some of them? Isn't that your understanding, Dr. Allard?

The Court: It isn't going to make any difference what Dr. Allard understands, it is what the record shows.

Mr. Angland: I have looked the record over.

The Court: I was mistaken myself, I suppose.

Q. Dr. Allard, have you ever heard of a thrombus developing in the vena cava and dropping down, or floating down, or drifting down to the lower extremities? A. No, sir, I have not.

Q. If there was, Doctor, a thrombus, just presuming there was a thrombus that was partial as to the vena cava, what would be the effect of that thrombus on the lower extremities?

A. Now, do I understand you correctly, if there

(Testimony of Louis Clayton Allard.)

were a [402] thrombus partially filling the lumen, the inside of the vena cava?

Q. That's right.

A. As long as the thrombus was partial, I don't believe that until it had reached a considerable size that it would have any effect on the lower extremities. However, that thrombus would continue to build until it occluded the vena cava, thereby producing a damming back of the drainage of the blood from the veins out of the lower extremities, and most certainly severe swelling of the lower extremities.

Q. How long would it, in your estimation, presuming a thrombus could develop in the vena cava, how long—strike that. Does a thrombus, Doctor, just attach to the wall of any blood vessel and then build a little and stop, or just how fast do they build?

A. Well, as I stated awhile ago, it is difficult to make any accurate statement as to the rate which they build up. However, they do not attach to the wall and build a partial thrombus and then stop. The condition continues.

Q. They keep building until they completely occlude the vessel? A. That's right.

Q. How long is the longest time that you have read of or heard of or learned of in your experience that it has taken a thrombus to occlude a blood vessel? [403]

A. Well, again I don't have any accurate fig-

(Testimony of Louis Clayton Allard.)

ures. However, it would be my estimation again that it would cover a period of probably not exceeding two weeks time.

Q. Two weeks would be the maximum for the thrombus to develop and occlude the vessel, in your opinion? A. And occlude the vessel, yes, sir.

Q. Doctor, have you examined Mr. Joseph P. Hennessey, the plaintiff, in this case?

A. Yes, sir, I have.

Q. When did you make your examination?

A. On January 13th, 1953.

Q. Will you, without giving your conclusions as to his condition, Doctor, will you just advise us what you did in making the examination? Did you give him a complete physical examination, what we would term a complete physical?

A. A general physical.

Q. What does a general physical examination consist of?

A. Well, sir, I elicited the history from Mr. Hennessey, and examined the heart, lungs, blood pressure, pulse rate, and the lower extremities.

Q. What did you find with respect to the lower extremities, Doctor?

A. At the time of my examination, it was found that the lower extremities were of equal length. There was atrophy of the lower calf and foot on the left, with change in the [404] consistency and a brownish discoloration of the left foot. The neutral, or most relaxed position of the foot was at an

(Testimony of Louis Clayton Allard.)

angle of 145 degrees, which, in our measurements, assumes that when the foot is parallel with the foreleg that that is 180 degrees, and when it is right angle to the foreleg, that is 90 degrees. The left foot could be forced up to, or dorsiflexed upward to 135 degrees, and plantarian flexed, or moved downward, to 160 degrees. There was a mild degree of limitation of inversion of the foot, rotating it inward, and moderate limitation of eversion of the foot. The contour of the right leg appeared normal. There was a full range of motion of the foot at the ankle, but the extreme of dorsiflexion, or forcing the foot upward, produced pain in the upper calf, posteriorly. There was also tenderness on pressure in the upper one-third of the right calf posteriorly. The arterial pulsations of the ankle and foot regions, both sides, were markedly diminished to palpation. Tests of his sensation by means of knife point revealed marked increased sensitivity of the entire left foot below the ankle, and this was most marked on the sole of the foot. There was also increased sensation of the toes of the right foot. That is my finding.

Q. Did Mr. Hennessey, in giving you the history of this matter, tell you that his trouble had developed while he was in the Deaconess Hospital in Billings, Montana, in January of 1950? [405]

A. Yes, sir.

Q. Have you had an opportunity, Dr. Allard, to review that hospital record?

A. Yes, I reviewed it.

(Testimony of Louis Clayton Allard.)

Q. That is identified as Defendant's Exhibit 2. Have you gone over that record, Doctor, in an attempt to determine the cause or source of Mr. Hennessey's present difficulty? A. Yes, I did.

Q. And what, in your opinion, Doctor, was the cause of his difficulty?

A. It was my impression that Mr. Hennessey suffered an occlusion—first of all suffered a saddle embolus at the bifurcation of the aorta, and that on this same day, that slipped off the saddle and lodged in the arteries of the left lower extremity, producing an occlusion of the arterial supply there.

Q. Doctor, is there any way that you know that you can determine what the source of the embolus was? A. In this particular case?

Q. Yes.

A. Now, sir, checking over the various possibilities as to sites of origin of this embolus, there is nothing specific to indicate any definite site of origin and nothing to give us a clue or guide as to this area.

Q. What, in fact, is an embolus, Doctor? [406]

A. An embolus is a loose—in this particular case, a loose blood clot in a blood vessel. It is a broken off thrombus or a clot that is free.

Q. Yes. Would a thrombus that developed 20 years previously be as well attached for medical purposes to the walls of a blood vessel as would a thrombus five years old or six months old?

A. Yes, sir, I believe that for these various pe-

(Testimony of Louis Clayton Allard.)

riods of time, six months upward, that the thrombus would have organized, or have changed into scar tissue, and by that time would be an integral part of the blood vessel, rather than an inert clot.

Q. With respect to that, you speak of scar tissue, Dr. Allard. There is a couple of medicines here. There is heparin and——

The Court: Dicumarol.

Q. Yes. You can find it in the hospital chart, that were administered to Mr. Hennessey. What is the effect of those medications, what do they do?

A. Heparin and dicumarol are anti-coagulants; they lower the prothrombin time, or in other words, they lower the clotting ability of the blood in order to prevent propagation of the thrombus, and that is its effect, the prevention of further coagulation.

Q. Do they dissolve the embolus or scar tissue that has fallen off? [407]

A. No, sir.

Q. Just prevent further coagulation, is that the effect, Doctor?

A. Yes, sir.

Q. They don't have the effect of dissolving that?

A. No, sir.

The Court: Doctor, you previously were testifying with reference to the length of time, the maximum length of time that would expire to occlude a vessel?

A. Yes, sir.

The Court: And as I recall, did you say something like two weeks?

A. That would be my estimation under these circumstances, assuming no other disease of the

(Testimony of Louis Clayton Allard.)

blood vessel wall, it would be my estimate as to the probable maximum period.

The Court: Then, counsel has then questioned you with reference to the existence of a thrombus for 20 years. Does a thrombus exist in vessels for 20 years?

A. The thrombus itself—the thrombus is the blood clot in the blood vessel. After a relatively short period of time, this clot begins to organize; it doesn't remain as an inert clot, it changes into fibrous tissue, or scar tissue, but then it is no longer truly a thrombus.

The Court: But becomes part of the vessel?

A. Becomes part of the vessel, yes. [408]

The Court: When that happens, when it attaches itself to the blood vessel, does it stop growing?

A. Does the thrombus stop growing?

The Court: Yes.

A. Well, sir, as previously indicated, in my knowledge, a thrombus will continue to grow until it has filled the opening of the blood vessel, the lumen or canal; that is when it stops, which means it has filled the blood vessel to a maximum, and, therefore, it has stopped growing at that time as far as diameter. The only change could then be in the length of the clot.

Q. (By Mr. Angland): It could continue to grow along the walls of the blood vessel, couldn't it, Doctor, to build up?

A. In length.

Q. Yes, and, as a matter of fact, it could have

(Testimony of Louis Clayton Allard.)

been such it could create canalization, where you develop a canal right through the thrombus, is that right?

A. Ultimately this organization, this forming of scar tissue, will become canalized, which will be a small canal or channel through the center of the fibrous tissue formed which replaced the clot, so, eventually, as a net result, there may be a small canal through the thickened scar tissue.

The Court: It is no longer a thrombus?

A. As soon as the clot is replaced by fibrous material, it is no longer a thrombus. [409]

The Court: But if it just remains a clot, it is then a thrombus, is that so, and within a maximum period of two weeks, it would occlude?

A. That would be my estimation, yes, sir.

The Court: So, unless it changes within that period of time and scar tissue attaches and it then becomes a part of the wall of the vessel, then you would have a complete occlusion within a two week period of time?

A. I don't believe—you say unless it changes within a two week period of time?

The Court: Unless that change occurs within a two week period you will have a complete occlusion?

A. No, sir, we are talking about two different things.

The Court: That is what I am afraid of. Get me straight.

(Testimony of Louis Clayton Allard.)

A. My idea was a period of time—assuming, as we started out, that this clot attaches to some portion of the wall of the blood vessel. The clot then builds until these cells continue to pile on the clot, building the thrombus until such time as the inert blood clot has filled this lumen of this blood vessel.

The Court: Yes.

A. Now, that building of the clot in my estimation, would probably be formed in a maximum of two weeks time. Now, it is a much slower process following that, it probably would require another three or four weeks before there was a sufficient [410] forming of fibrous tissue to have this firmly or reasonably attached to the blood vessel wall, so that then along about that time, we begin to get that situation where we begin the fibrous tissue. We still have some clot. That organization goes on rather rapidly until such time that in a matter of perhaps eight weeks, 10 weeks, 12 weeks, somewhere in that range, this clot then is reasonably firm, fibrous tissue, and no longer really a clot, technically speaking.

The Court: Does it continue to grow?

A. Only in length, because it has filled the entire lumen, entire inside of the blood vessel at that level, so any growth from then on, because this would also occur earlier, would be behind it, downstream in the blood vessel where the cells continue to pile up on the downstream end.

(Testimony of Louis Clayton Allard.)

The Court: You lost me again.

Mr. Angland: I am wondering if the Judge is of the view that the clot might just float around in the body awhile and then become temporarily attached, say, to the aorta. Is that what you have in mind?

The Court: No, as I understand, some irregularity occurs in the inner wall of the vessel——

A. Yes.

The Court: As a result of that irregularity, platelets and the rest of these things that go to make that start building up?

A. Yes. [411]

The Court: And they start filling the vessel?

A. Yes.

The Court: The clot?

A. Yes.

The Court: That is a thrombus, as I understand it.

A. That is the first portion of a thrombus.

The Court: The first portion of a thrombus. How fast does that build?

A. As I answered awhile ago, as to a definite rate, I can't tell you in days or hours or minutes. My idea, based on the thrombi that I have seen and so forth, would be that within a maximum period of two weeks time this clot then has built up so it has filled the blood vessel at this level.

The Court: But you have shut off the flow of blood in that vessel?

A. Yes.

(Testimony of Louis Clayton Allard.)

The Court: Would that be true in the minor, or capillary vessels, whatever you call them, or is it true just as well in the larger vessels, the vena cava and aorta and the rest of them? Would the rate of growth be the same, and would there be occlusion within a period of some two or three weeks?

A. Yes, sir.

The Court: No matter which vessel it is?

A. Yes, sir, the reason I feel that is because of the [412] increased volume.

The Court: It would build up faster.

A. At least at the same rate.

The Court: Or at the same rate. Very well. I think I see what you are talking about. Go ahead.

Q. I would like to further point out in connection with what you are talking about, Dr. Allard, have you in your work as a physician and surgeon any particular time that you become concerned about an embolus following surgery?

A. In general, the most dangerous period of time for a large embolus to occur is about the 10th postoperative day, at which time, if you are going to get into trouble with an embolus arising from a thrombus in a larger vessel, this thrombus has formed, is not yet sufficiently firmly attached to the blood vessel and is dislodged and lodges, say, in the lung, and frequently is of sufficient size to be fatal almost immediately; and that time, as I said, is very frequently about the 10th day following surgery.

(Testimony of Louis Clayton Allard.)

Q. Following that after a 10-day period, the thrombus becomes sufficiently attached that it becomes actually a part of the vessel wall, isn't that the situation, Doctor?

A. Yes, sir, from then on the attachment is becoming more and more firm until eventually, really a short while later, it then is sufficiently firmly attached that it is not going to dislodge at all, it is not going to become free. [413]

The Court: It is also going to block the vessel, isn't it; it is also going to occlude the vessel, is it not?

A. Yes, sir.

The Court: It is going to eventually occlude the vessel?

A. Yes, sir.

The Court: So when thrombus once gets started, that vessel is going to become occluded?

A. Yes, excluding conditions—there is a condition called an aneurysm which occurs in the arterial system, which is a dilation or ballooning out of the walls of an artery due to a weakening, and the aneurysm can have a thrombus in the wall over a longer period of time. That is the only condition in which the artery isn't going to rapidly occlude.

The Court: That is a different situation. So, when the vessel is finally occluded, which is ordinarily within a two or three week period, then the circulatory system has to develop an auxiliary or collateral system to pass the blood by that point, is that it?

(Testimony of Louis Clayton Allard.)

A. Yes, sir.

Q. On that subject, Doctor, if you had an occlusion of the vena cava, where would your auxiliary or collateral vessels be?

A. The principal circulation would be through the superficial veins of the abdomen wall anteriorly which, below the level of the navel, ordinarily drain downward into the iliac veins, and then into the veins above the navel which drain upward to the superior vena cava. [414]

Q. How obvious are these veins on the abdomen that would be apparent if you had an occlusion of the vena cava?

A. They are quite distinctly visible, very easily seen as enlarged veins.

Q. Very much enlarged? A. Yes, sir.

Q. Something like the back of the hand?

A. Larger than that.

Q. Larger than that, more apparent?

A. Yes, sir.

Q. Did you find any condition of that kind with respect to Mr. Hennessey, the plaintiff in this case?

A. No, I didn't.

Q. I think you have already stated, Doctor, that you were unable from your examination of Mr. Hennessey and the examination of the chart from the Deaconess Hospital to fix the source of the embolus that became a saddle embolus in the aorta, is that right? A. That's right.

Mr. Angland: That's right. You may cross-examine.

(Testimony of Louis Clayton Allard.)

Cross-Examination

By Mr. M. F. Hennessey:

Q. Doctor, at the time you examined Mr. Hennessey, did you check his shoulder or his back?

A. Yes, I checked his right shoulder and his neck. [415]

Q. And did you find anything at that time as to the right shoulder and neck?

A. Yes, sir, the examination of the right shoulder region revealed mild tenderness of the mid-portion of the trapezius muscle, which is the prominent muscle extending across the top of the shoulder area on the right. There was no palpable spasm of this muscle at this time. The contour of the shoulder was normal. There was full range of motion of the shoulder, with pain in the mid-portion of the trapezius muscle, or tender area, on the extremes of motion. There was mild grating and crepitation on the extreme of abduction, which is moving the arm straight out from the side of the body. Did you ask me just about the shoulder, sir?

Q. Just the shoulder and back.

A. On examination of the neck, there was tenderness over the spinous process, which are palpable bony process of vertebra in the lower cervical region, approximately the fourth, through and including the 7th cervical vertebra. There was also tenderness of the adjacent erector spinae muscles in the same area. There was a full range of motion

(Testimony of Louis Clayton Allard.)

of the neck, and mild crepitation was again noticed approximately over the spinous process of the fifth cervical vertebra.

Q. Doctor, I believe you said from the examination of the chart, it was your impression that Mr. Hennessey had a saddle embolus at the bifurcation of the aorta, is that right?

A. Yes, sir. [416]

Q. Would you state to me what the probable source of that saddle embolus would be, where would it probably come from?

A. I have stated that I don't know.

Q. You don't know? A. Yes, sir.

Q. Would it be possible, Doctor, for a blow to distend the aorta and injure the inner lining, and thereby have an embolism start there?

A. A thrombus?

Q. Yes, a thrombus.

A. Do you mean a direct blow?

Q. No. Assuming that Mr. Hennessey received a severe blow on the shoulder and the blood was compressed down in the aorta?

A. I don't believe so.

Q. Could any type of injury, Doctor, to the inner lining of the aorta, would that cause a thrombus to form? A. Yes.

Q. And here is where I am confused. Have you ever observed where there was a thrombus in the aorta? A. No, sir, not in the aorta itself.

Q. Not in the aorta itself? A. No, sir.

(Testimony of Louis Clayton Allard.)

Q. Now, it is my understanding that at one time you testified that if the thrombus had been formed, it is possible that after six months, it would be a little difficult to dislodge, five [417] years old, or 20 years old, it would still remain there, is that right, it would not dislodge? A. That's right.

Q. But within two weeks, the whole blood vessel would be blocked off, is that right?

A. That's right.

Q. Then it is impossible—any time, under your theory, anytime you have an injury to the lining of the aorta which would cause a thrombus to form that within two weeks, that portion of the body, the blood supply would be cut off?

A. I don't believe I understand that.

Q. Well, I think that was what was bothering the judge.

A. Would you repeat the question is what I meant.

Q. Well, assume, Doctor, there is an injury to the inner lining of the aorta? A. Yes, sir.

Q. Is your contention that when the workings of the blood and the body to repair that injury began, it would start a thrombus, is that correct?

A. Yes, sir.

Q. Then, within two weeks, the artery would be completely blocked off and no blood would come down through the aorta? A. Yes, sir.

Q. And that would apply to any vessel in the body? A. Yes, sir. [418]

Q. And it would be impossible, you believe, to

(Testimony of Louis Clayton Allard.)

have a clot that would only partially block a blood vessel? A. Yes, for any period of time.

The Court: Doctor, what would be the evidences of a thrombus in the aorta that has grown to occlusion?

A. The evidence would be, because of the shutting off of the arterial blood supply beyond that level, or nearly completely shutting it off, because the collateral supply will not develop as rapidly, there would be excruciating pain; there would be first of all, a conspicuous pallor, a very white, dead appearance of the skin, that is, a whitish, and ultimately the sloughy bluish discoloration which precedes gangrene, and ultimately gangrene, if it were occluded at that level, and assuming that the patient survived long enough to develop gangrene.

The Court: Would that be a violent assumption?

A. Which?

The Court: To assume the patient would live long enough to develop gangrene if the aorta were occluded?

A. I don't believe they would live that long.

The Court: Yes, that is what I say, that would be a violent assumption that they would live that long to develop gangrene if the aorta occluded.

A. Yes.

The Court: But you think that the emboli that lodged in the [419] lower extremities of Mr. Hennessey came through the aorta?

A. Yes, it is my feeling that it was a saddle embolus when it first became apparent.

(Testimony of Louis Clayton Allard.)

The Court: What was the saddle embolus?

A. It is this blood clot of fair size, moderate size, that flows down the aorta and lodges over the splitting, the saddle of this vessel.

The Court: Where can that saddle embolus come from? A. Where can it come from?

The Court: Yes.

A. The usual or most common site would be from the heart, from the left ventricle of the heart, or the left side of the heart.

Q. Now, Doctor, you have examined the records from the Deaconess hospital of Mr. Hennessey?

A. Yes.

Q. Do those records indicate to you whether or not the saddle embolus came from the heart?

A. There is no indication in the records of anything such as heart irregularity and so forth which would point to the heart as a definite site.

Q. In other words, in your opinion, it did not come from the heart, is that right?

A. That is not correct. I said I don't know where it came from. [420]

Q. I don't want you to say just what you think, Doctor. But here the records do not indicate it did come from the heart, is that right?

A. That's right?

Q. Where would the next most likely place be for that saddle embolus to come from?

A. The next most likely place would probably be from the pulmonary vein.

(Testimony of Louis Clayton Allard.)

Q. Have you examined the records to see if there is anything in the records to indicate whether the pulmonary vein was the source of the embolus?

A. No, sir, there is nothing to indicate the pulmonary vein.

Q. Then, where would the next source of saddle embolus or embolism in the aorta be?

A. As one gets into the more remote possibilities, it could possibly occur as a so-called paradoxical embolus which could arise from anywhere in the vein, flow through the right side of the heart and through a large patent foramenal vessel, thus avoiding the lungs, and flowing directly into the aorta.

Q. Now, Doctor, this last condition that you explained, that could actually—actually there would have to be a deformity in the heart for that to exist, actually, wouldn't there, or at least an enlargement of one of the openings in the heart somewhere?

A. Yes, an enlarged abnormal opening in the heart. [421]

Q. Would that abnormal opening show on examination, would there be indications of it?

A. If it were that large, it very likely would show some change in the contour of the heart on an X-ray, at least.

Q. Is there anything in Mr. Hennessey's medical record which would lead you to believe his heart might be in such condition as to allow that condition to happen?

(Testimony of Louis Clayton Allard.)

A. No, sir, there is not.

Q. Actually, there isn't one person in a hundred that would have a heart like that, is there, Doctor?

A. There would probably be less than that.

Q. Less than that. So, do you have any opinion at all, Doctor, as to what the source of this embolism was?

A. No, sir, nothing specific.

Q. And from your examination of Mr. Hennessey and from studying the records, then, you just would not say what caused the present condition brought about by the embolism, is that right?

A. I wouldn't say as to the site of origin.

Q. That is what we are trying to determine. I think we can all agree it was there.

A. That's right.

Q. But you would not say what the site was?

A. No, sir.

Q. It is impossible for you to determine?

A. It is impossible for me to, yes. [422]

Q. Doctor, would you say that it would be impossible to have a blow force the blood in the system—a blow struck in the shoulder, force the blood down so as to rupture the——

A. Lumen?

Q. Well, the inner lining of either the aorta or the vena cava?

A. I wouldn't say it is impossible; I would say it is highly unlikely.

Q. But it could happen, is that right?

A. Yes, sir.

(Testimony of Louis Clayton Allard.)

Q. And if either the inner lining of the vena cava or aorta was injured, there would be a tendency to have this embolus form?

A. A thrombus form.

Q. Or a thrombus form? A. Yes, sir.

The Court: Doctor, then from your examination of Mr. Hennessey and the history, would you say that the thrombus from which the embolus came was not in the aorta itself?

A. Yes.

The Court: And would you say that the thrombus from which the embolus came was not in the aorta itself?

A. Yes.

The Court: And would you say that the thrombus from which the embolus came was not in the vena cava?

A. Yes.

The Court: But it must have come from a thrombus?

A. Yes, sir. [423]

The Court: So, it came from a thrombus in some minor part of the circulatory system, would that be your opinion? At least, at some point that symptoms wouldn't be readily ascertainable?

A. It was silent.

Q. Doctor, in your examination of Mr. Hennessey, did you notice whether or not he had a spastic condition in his left leg?

A. Not at that time of my examination, but he had the contractions which I described and the

(Testimony of Louis Clayton Allard.)

changes in the tissue locally, and described to me the history that at times when he becomes tense, nervous, excited or tired that he would get spasmodic twitching or contractions of this extremity.

Q. What do you think would cause this spastic condition to exist?

A. There has been a tremendous insult to all of the tissue below the level of occlusion of the artery which has altered their responses and reactions tremendously. It would be my opinion that the spasticity is an unusually great amount of stimuli flowing up the nerves through a spinal reflex arc and contracting the working, functioning muscles in that extremity.

The Court: Do I understand that you attribute some connection between the spasticity and the fact there was an artery that was struck by the embolus on January 7th, rather than a vein?

A. Yes, sir.

The Court: Is there some connection between that?

A. The fact that this involved an artery instead of a vein? [424]

The Court: That it involved an artery instead of a vein. Explain that a little to me.

A. The artery is carrying nutrition, the materials that are going to keep the cells alive. Therefore, when the artery was occluded, the cells and tissue to which this blood vessel carries nutrition are going to change, except for those portions that pick up collateral circulation sufficiently, and die, or partially die, which is a violent change. The

(Testimony of Louis Clayton Allard.)

thrombus or embolus forming in a vein, causing a damming back of the venous blood, and the arterial blood is still flowing into these tissues, and therefore, they are receiving nourishment, but there is a back pressure on the return of the used blood from that area; and, therefore, because of these violent insults to these tissues which change nerves, arteries, muscles in there and everything in there, the skin, the responses from that are no more normal in the nerves than they are in the muscles which are contracted there.

Q. Now, Doctor, how did you determine that the block was in the artery. What did you do to determine that factor.

Mr. Angland: I will object to that as repetition. I think the Doctor has just explained that, your Honor, very thoroughly.

The Court: He has explained one of the reasons, anyway, why he says it was an artery rather than a vein, but go ahead.

A. My thinking as to why this is in the artery and not in [425] the vein is that there was a sudden onset of changes in these extremities for a few minutes, changes in the sensation which Mr. Hennessey felt, and a short while afterwards, severe pain, which, as I understand, was sufficiently severe so that his recollection of quite a period of time is quite hazy. A short while after that, the notes by Dr. Stokoe in the chart on January 7th, 1950, reveal a definite distinct pallor or whitish discoloration of this extremity, with no palpable arterial

(Testimony of Louis Clayton Allard.)

pulsations below this level; and as opposed to the type of course which would occur if the occlusion were in the vein, which would produce swelling, and the pain, if any, this early would be much milder, in fact, would probably be fairly mild, and would tend eventually to develop a bluish hue to the leg if the occlusion were high.

Mr. Hennessey: That is all.

Redirect Examination

By Mr. Angland:

A. May I ask one question, your Honor, that occurred to me here? Doctor, what is alkalosis?

A. Alkalosis is increased alkaline reaction of the blood above its normal small balanced range. I believe the P.H., and I am not at all certain of that, is 7.6, and with alkalosis there is increased alkaline reactions above that level.

Q. Does it arise by reason of holding the breath for some period of time or not? [426]

A. It can, yes.

Q. It can develop from that? A. Yes.

Mr. Hennessey: If the Court please, could I ask a question I overlooked on cross-examination?

The Court: Yes.

Recross-Examination

By Mr. Hennessey:

Q. Doctor, on the growth of this embolus, the rate of speed of growth would vary with the person and the condition of his blood, is that not true?

(Testimony of Louis Clayton Allard.)

A. Yes, sir.

Q. Do you have any opinion as to why the clot, or the saddle embolus, as you called it, would be as large as it was at that time, I mean large enough so as to block off both of the arteries?

A. Well, I think an embolus, in an artery, at least, at that time you also get a spasm of the artery. As you undoubtedly know the caliber of the artery is controlled by two opposing sets of nerves, the sympathetic and the parasympathetic nerves, with the sympathetic nerves being the contractors, and an embolus being an irritating factor, immediately associated with the lodging of this is produced an arterial spasm as a reaction to the irritation. Therefore, while the saddle embolus was lodged in the bifurcation of the aorta, while it wasn't huge enough to completely occlude both arteries, the vasospasm and the arterial spasm produced the changes [427] in both extremities.

Mr. Hennessey: That is all, thank you, Doctor.

Mr. Angland: That is all, Doctor.

(Witness Excused.)

[Title of District Court and Cause]

CERTIFICATE OF CLERK

United States of America,
District of Montana—ss.

I, E. Warren Toole, Clerk of the United States District Court in and for the District of Montana,

do hereby certify that the papers hereto annexed, and the accompanying two volumes marked Exhibit "A" on Appeal, are the originals filed in Case No. 1313, Joseph P. Hennessey, Plaintiff, vs. United States of America, Defendant, and designated by the parties as the record on appeal herein.

I further certify that Exhibits Nos. 1, 2, 4, 5, 6, 7, 10, 13, 14, 16, 17, 20, 21, 22, and 23 are the originals introduced in evidence at the trial of this cause and are part of the record on appeal herein.

I further certify that, "New England Journal of Medicine, Page 529—et seq." is also transmitted herewith as part of the record herein, pursuant to the designation by the parties in the stipulation concerning printing of the record.

Witness my hand and seal of said court this 8th day of March, 1956.

[Seal]

E. WARREN TOOLE,
Clerk as Aforesaid.

By /s/ ELIZABETH C. McKEE,
Deputy Clerk.

[Endorsed]: No. 15063. United States Court of Appeals for the Ninth Circuit. Joseph P. Hennessey, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Montana, Billings Division.

Filed: March 12, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15,063

JOSEPH P. HENNESSEY,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLANT'S STATEMENT OF POINTS

To the Honorable Chief Justice and the Associate
Justices of the United States Court of Appeals
for the Ninth Circuit:

Appellant respectfully states that the following
are the points upon which he intends to rely on
appeal:

1. The Court erred in its finding number XII
to fail to further find, in addition to the finding it
made that as a direct result of the negligence of
Fay R. Livingston mentioned in Finding of Fact
XI the plaintiff sustained the personal injuries set
out in its Finding of Fact Number XIV.

2. The Court erred in its Finding of Fact Num-
ber XV that the Court "Is unable to find that the
blood clot, referred to in its Finding of Fact XIV
and the resulting damage therefrom, was caused by
any injury sustained when Fay R. Livingston fell

upon him at the airport in Pocatello, Idaho, as found above.”

3. The Court erred in failing to conclude in its “Conclusions of Law” that as a direct and proximate result of Fay Livingston’s negligent and careless acts and omissions as a servant of the United States, acting within the course and scope of his employment, the plaintiff Joseph P. Hennessey is entitled to additional special damages and damages for the injuries set forth in Court’s Finding of Fact XIV.

4. The Court erred in refusing to grant Plaintiff’s Motion for Amendment of Findings in accordance with his motion for a New Trial or Amendment of Findings.

5. The Court erred by making its order on the Motion for a New Trial or Amendment of Findings in denying Plaintiff’s Motion.

6. The Court erred in directing and entering judgment for an inadequate amount of damages considering the evidence in the case.

Dated this 27th day of April, 1956.

DOEPKER & HENNESSEY,
By /s/ M. J. DOEPKER,
Attorneys for Appellant.

Service of copy acknowledged.

[Endorsed]: Filed April 30, 1956.

[Title of Court of Appeals and Cause.]

STIPULATION RELATING TO THE PRINT-
ING OF THE ORIGINAL EXHIBITS

It is hereby stipulated, subject to the approval of the United States Court of Appeals for the Ninth Circuit, that the original exhibits heretofore filed with this Court need not be printed or copied in the record, but may be referred to by the parties hereto and considered by the Court as though they were incorporated in the printed record. Any portions of said exhibits, which either party deems material, shall be printed in the brief of such party, and referred to therein.

Dated this 27th day of April, 1956.

DOEPKER & HENNESSEY,
By /s/ M. J. DOEPKER,
Attorneys for Appellant.

UNITED STATES DISTRICT
ATTORNEY FOR MONTANA,
By /s/ KREST CYR,
Attorney for Appellee.

[Endorsed]: Filed May 2, 1956.

